

Rulemaking File  
Rulemaking File Index  
Title 18. Public Revenue  
Sales and Use Tax  
Regulation 2000, *Retailer Reimbursement Retention*

*OAL Approval*

*1<sup>st</sup> Readopt*

*2<sup>nd</sup> Readopt*

*Index*

1. [Public Comment From Bill Dombrowski, September 24, 2012](#)
2. [Chief Counsel Matters Memo dated October 12, 2012](#)
3. [Public Comment From Ken Dunham, October 12, 2012](#)
4. [Public Comment From David E. Carlsen, October 18, 2012](#)
5. [Public Comment From David A. Bischel, October 19, 2012](#)
6. [Public Comment From Bill Dombrowski, October 21, 2012](#)
7. [Reporter's Transcript Chief Counsel Matters, October 23, 2012](#)
8. [Draft Minutes, Chief Counsel Matters, October 23, 2012](#)
9. [Assembly Bill No. 1492](#)
10. [Economic and Fiscal Impact Statements, November 27, 2012](#)
11. [Notice to Interested Parties and email, November 14, 2012](#)
12. [Statement of Compliance](#)

RECEIVED

DEC 17 2012

by EXECUTIVE SECRET'S OFFICE  
STATE BOARD OF REGULATION

**State of California  
Office of Administrative Law**

**In re:**  
**Board of Equalization**

**Regulatory Action:**

**Title 18, California Code of Regulations**

**Adopt sections: 2000**

**Amend sections:**

**Repeal sections:**

**CORRECTED NOTICE OF APPROVAL OF  
EMERGENCY REGULATORY ACTION**

**Government Code Sections 11346.1 and  
11349.6**

**OAL File No. 2012-1128-01 E**

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This is an emergency rulemaking action pursuant to Public Resources Code section 4629.5. It adds section 2000 to Title 18 of the California Code of Regulations, which establishes the reimbursement amount which lumber and engineered wood products retailers may retain to compensate them for the costs associated with the collection of the one-percent-of-sales -price assessment imposed on purchasers of these products and collected by retailers.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 1/1/2013 and will expire on 7/2/2013. The Certificate of Compliance for this action is due no later than 7/1/2013.

Date: 12/4/2012

  
Dale P. Mentink  
Senior Staff Counsel

For: DEBRA M. CORNEZ  
Director

Original: Kristine Cazadd  
Copy: Richard Bennion

**OFFICE OF ADMINISTRATIVE LAW**

300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
(916) 323-6225 FAX (916) 323-6826



**DEBRA M. CORNEZ**  
Director

**MEMORANDUM**

TO: Richard Bennion  
FROM: OAL Front Desk *W*  
DATE: 11/27/2013  
RE: Return of Approved Rulemaking Materials  
OAL File No. 2012-1128-01E

OAL hereby returns this file your agency submitted for our review (OAL File No. 2012-1128-01E regarding Retailer Reimbursement Retention).

Enclosures If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State) as follows:

- (1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
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**Please note this new requirement:** Unless an exemption applies, Government Code section 11343 now requires:

1. Section 11343(c)(1): Within 15 days of OAL filing a state agency's regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.
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**NOTE ABOUT EXEMPTIONS.** Posting and linking requirements do not apply to emergency regulations; regulations adopted by FPPC or Conflict of Interest regulations approved by FPPC; and regulations not subject to OAL/APA review. However, an exempt agency may choose to comply with these requirements, and OAL will post the information accordingly.

**DO NOT DISCARD OR DESTROY THIS FILE**

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the State Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

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Enclosures



OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2012-1128-OIE</b>
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For use by Office of Administrative Law (OAL) only

2012 NOV 28 AM 9:43 OFFICE OF ADMINISTRATIVE LAW	
NOTICE	REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
State Board of Equalization

AGENCY FILE NUMBER (if any)

For use by Secretary of State only

2012 DEC -4 PM 1:35

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Retailer Reimbursement Retention		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT 2000 AMEND REPEAL	
TITLE(S) 18			
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) <b>January 1, 2013</b>
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Rick Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE November 27, 2012
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 04 2012

Office of Administrative Law

## Title 18. Public Revenues

### Division 2. State Board of Equalization – Business Taxes

#### Chapter 4.1. Lumber Products Assessment

#### **Regulation 2000. Retailer Reimbursement Retention**

Public Resources Code section 4629.5, as added by Statutes 2012, chapter 289, requires the Board of Equalization to adopt a regulation to determine the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by Public Resources Code section 4629.5.

A retailer required to collect the Lumber Products Assessment may retain no more than \$250 per location as reimbursement for startup costs associated with the collection of the assessment. Such reimbursement is to be taken on the retailer's first return on which the Lumber Products Assessment is reported or, if the amount of the collected assessment is less than the allowed reimbursement, on the retailer's next consecutive returns until the allowed reimbursement amount is retained.

"Location" means and is limited to a business location registered under the retailer's seller's permit as of January 1, 2013, where sales of products subject to the assessment are made.

Note: Authority cited: Section 4629.5, Public Resources Code. Reference: Section 4629.5, Public Resources Code.

## **Notice of Emergency Action**

### **The State Board of Equalization Has Adopted California Code of Regulations, Title 18, Section 2000, *Retailer Reimbursement Retention***

#### NOTICE IS HEREBY GIVEN

Public Resources Code (PRC) section 4629.5, subdivision (a)(1) imposes a one-percent assessment on purchasers of lumber products and engineered wood products on and after January 1, 2013. PRC section 4629.5, subdivision (a)(3) requires retailers to collect the assessment and provides that retailers “may retain an amount [from the assessments they collect] equal to the amount of reimbursement, as determined by the State Board of Equalization [(Board)] pursuant to regulations, for any costs associated with the collection of the assessment” imposed by subdivision (a)(1). The Board, pursuant to the authority vested in it by PRC section 4629.5, subdivision (a)(3) has adopted California Code of Regulations, title 18, section (Regulation) 2000, *Retailer Reimbursement Retention*, as an emergency regulation pursuant to Government Code section 11346.1, to specify the amount of reimbursement a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3).

#### EMERGENCY

##### *Statement of Emergency*

PRC section 4629.5, subdivision (a)(3) expressly provides that “For purposes of this paragraph, the State Board of Equalization may adopt emergency regulations pursuant to Section 11346.1 of the Government Code. The adoption of any regulation pursuant to this paragraph shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, and general welfare.”

##### *Section 48 Statement*

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of the emergency regulation to the Office of Administrative Law (OAL), the Board provide a notice of the emergency regulation to every person who has filed a request for notice of regulatory action with the Board. After submission of the emergency regulation to OAL, OAL shall allow interested persons five calendar days to submit comments on the emergency regulation as set forth in Government Code section 11349.6.

#### AUTHORITY & REFERENCE

PRC section 4629.5

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

### *Existing Law*

PRC section 4629.5, as enacted by Assembly Bill No. (AB) 1492 (Stats. 2012, ch. 289), imposes, on and after January 1, 2013, a one-percent assessment on purchasers of lumber products and engineered wood products to be collected by retailers at the time of sale. As enacted by AB 1492, PRC section 4629.5, subdivision (a)(3) authorizes the Board to adopt regulations to determine the amount retailers may retain from the assessments they collect as reimbursement for certain compliance costs. Specifically, PRC section 4629.5, subdivision (a)(3), in relevant part, provides:

The retailer shall collect the assessment from the person [i.e., purchaser] at the time of sale, and may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to regulations, for any costs associated with the collection of the assessment, to be taken on the first return or next consecutive returns until the entire reimbursement amount is retained.

Notably, the statute provides that retailers may only retain the Board-prescribed amount of reimbursement one time, on the retailers' first return or next consecutive returns filed immediately after the retailers are required to begin collecting the assessment on January 1, 2013. The statute does not authorize retailers to retain additional amounts thereafter.

As to legislative history, both the relevant Senate and Assembly floor analyses refer to retailers being reimbursed for "costs to set up collection systems." (See p. 2 of the September 1, 2012, Assembly Floor Analysis of AB 1492 and p.2 of the August 29, 2012, Senate Floor Analysis of AB 1492.) Thus, both the plain language of PRC section 4629.5, subdivision (a)(3) and the available information regarding legislative intent support an interpretation that subdivision (a)(3) provides for affected retailers to retain a one-time amount, as specifically determined by the Board, for reimbursement of costs to set up collection systems prior to the commencement of their collection duties on January 1, 2013. Therefore, neither the plain language of PRC section 4629.5, subdivision (a)(3) nor the available legislative history persuasively support an interpretation that would allow for the retention of ongoing costs of compliance or of amounts in excess of the Board-specified reimbursement amount.

### *Regulation 2000*

The Board added a new chapter 4.1 to division 2 of title 18 of the California Code of Regulations so that any regulations the Board is required to adopt to implement, interpret, and make specific the assessment imposed by PRC section 4629.5, as enacted by AB 1492, can be codified in the new chapter. The Board also voted to adopt Regulation 2000, *Retailer Reimbursement Retention*, which will be codified in new chapter 4.1, as an emergency regulation, on October 23, 2012, in order to determine the "amount of reimbursement" a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3), when retailers start collecting the assessment on January 1, 2013. Regulation 2000

provides that retailers as of January 1, 2013, may retain collected assessment amounts of up to \$250 per location as reimbursement for one-time, startup costs associated with the collection of the assessment (i.e., the costs to set up collection systems). Specifically, Regulation 2000 provides:

Public Resources Code section 4629.5, as added by Statutes 2012, chapter 289, requires the Board of Equalization to adopt a regulation to determine the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by Public Resources Code section 4629.5.

A retailer required to collect the Lumber Products Assessment may retain no more than \$250 per location as reimbursement for startup costs associated with the collection of the assessment. Such reimbursement is to be taken on the retailer's first return on which the Lumber Products Assessment is reported or, if the amount of the collected assessment is less than the allowed reimbursement, on the retailer's next consecutive returns until the allowed reimbursement amount is retained.

"Location" means and is limited to a business location registered under the retailer's seller's permit as of January 1, 2013, where sales of products subject to the assessment are made.

Regulation 2000 is anticipated to provide the following benefits:

- Provide certainty as to the amount of reimbursement retailers may retain pursuant to PRC section 4629.5, subdivision (a)(3) before the assessment is imposed and collected beginning on January 1, 2013, and before retailers are required to file their first returns showing the retention of the Board-specified amount of reimbursement;
- Permit retailers to retain the amount of reimbursement determined by the Board without requiring retailers to keep additional records or substantiate their individual costs; and
- Preserve the public peace, health, safety, and general welfare, as provided in PRC section 4629.5, subdivision (a)(3).

The \$250 reimbursement amount is supported by U.S. Census Bureau data and a 2006 PricewaterhouseCoopers LLP report (*Retail Sales Tax Compliance Costs: A National Estimate, Volume One: Main Report*, PricewaterhouseCoopers LLP, Prepared for Joint Cost of Collection Study, National Economic Consulting, April 7, 2006). The report was commissioned by a public-private partnership known as the Joint Cost of Collection Study and analyzes a large-scale survey that was conducted to develop the first national measure of sales tax compliance costs. The report shows that, in 2003 (a time during which many retailers had compliance costs associated with rate and base changes under the Streamlined Sales and Use Tax Agreement), gross retail sales tax compliance costs for programming and servicing cash registers were reflected by a weighted average cost

of 0.01 percent of taxable sales. (See 2006 PricewaterhouseCoopers LLP report, Table V.B.1b (“Gross Compliance Costs by Type and Size of Annual Retail Sales, 2003 [As a percentage of total taxable sales]”), at p. 13.)

Board staff calculated the \$250 amount by multiplying 0.01 percent by \$2,500,000. The \$2,500,000 figure was chosen after reviewing the United States Census Bureau’s data for the Retail Trade Sector from the *2007 Economic Census*, which showed that about 50 percent of lumber retail establishments in 2007 had sales of \$2,500,000 or less. This data provides an objective foundation for determining that a reimbursement of \$250 per location represents a reasonable estimate of the average startup costs for retail lumber establishments that must start collecting the assessment on January 1, 2013 (i.e., the costs to set up collection systems).

As additional comparison, Board staff looked at the average reimbursement amount retained by retailers under the Covered Electronic Waste Recycling Fee imposed by PRC section 42464 and the California Tire Fee imposed by PRC section 42885, which allow retailers to retain 3 percent and 1.5 percent of the fees they collect, respectively, as reimbursement for collection costs. The average reimbursement amount, meaning the total reimbursement amount retained by all retailers divided by the number of retailers, was \$244 per retailer in fiscal year 2010-2011. While compliance costs for these programs are reimbursed per retailer (not per location) and on an ongoing basis (not a one-time, startup basis), the average reimbursement amount for these programs is generally consistent with, and provides additional support for, the \$250 reimbursement amount for collecting the assessment imposed by PRC section 4629.5.

David Bischel, President of the California Forestry Association (CFA), indicated in his October 19, 2012, letter to the Board that:

- The CFA was a key sponsor of and worked closely with the Legislature and the administration in enacting AB 1492; and
- The CFA supports the adoption of Regulation 2000 because the regulation “reflects the legislative intent regarding retailer compensation,” which “was to allow only a one-time amount to cover initial costs of compliance, which the Legislature had been informed would be no more than \$250 per retail establishment.”

Mr. Bischel also made similar comments on behalf of the CFA and urged the Board to adopt Regulation 2000 during the Board’s discussion of the regulation on October 23, 2012.

The Board has performed an evaluation of whether Regulation 2000 is inconsistent or incompatible with existing state regulations and determined that Regulation 2000 is not inconsistent or incompatible with existing state regulations because it is the only existing state regulation prescribing the “amount of reimbursement” a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3). In addition, there is no federal assessment

similar to the assessment imposed by PRC section 4629.5 and there are no comparable federal regulations or statutes to Regulation 2000.

#### DOCUMENTS RELIED UPON AND INTERESTED PARTIES COMMENTS

The Board relied upon a memorandum from its Chief Counsel, Randy Ferris, dated October 12, 2012, the attachment to the memorandum, Mr. Bischel's October 19, 2012, letter, and the comments made by Board staff and interested parties during the discussion of Regulation 2000 on October 23, 2012, including Mr. Bischel's comments expressing the CFA's support for the adoption of Regulation 2000, in voting to adopt Regulation 2000 as an emergency regulation.

In addition, the Board received a September 24, 2012, letter from Bill Dombrowski, President and CEO of the California Retailers Association (CRA), which asked eight questions regarding the collection of the assessment imposed by PRC section 4629.5, that Board staff responded to during the Board's discussion of Regulation 2000 on October 23, 2012.

Further, prior to adopting Regulation 2000, the Board received and considered an October 12, 2012, letter from Ken Dunham, Executive Director of the West Coast Lumber & Building Material Association, in which the association requested that:

- For retailers whose computer systems are capable of implementing the assessment, Regulation 2000 provide an initial "reimbursement of a minimum of \$4,500 per business location" and ongoing reimbursement of "\$1,500 annually to handle updates and changes" to the retailers' computer systems; and
- For those retailers whose current computer systems are not capable of implementing the assessment, Regulation 2000 provide reimbursement at "a level sufficient to recover the cost of replacement computer systems."

The Board received and considered an October 18, 2012, letter from David Carlsen, Vice President Tax for 84 Lumber Company, which explained that the company had conservatively estimated that it would cost \$21,000 to make changes to its POS system to collect the assessment at its California locations. The Board also received and considered an October 21, 2012, letter from Mr. Dombrowski, which indicated that the CRA believes that the \$250 per location reimbursement amount specified by Regulation 2000 is inadequate and that the CRA disagrees with the conclusion that PRC section 4629.5, subdivision (a)(3) only provides for a retailer to retain the specified reimbursement amount "one time."

Furthermore, during the Board's discussion of Regulation 2000 on October 23, 2012:

- Mr. Dunham reiterated the West Coast Lumber & Building Material Association's comments from his October 12, 2012, letter;
- Gerry Charron, Software Development Manager for Stock Building Supply, stated that Regulation 2000 would provide \$2,500 of reimbursement to his

business, but that he estimates that it will cost his business \$50,000 (250 hours at \$200 per hour) to update its computer system to collect the assessment;

- Craig Evans, Vice President of Learned Lumber, stated that it will cost his business \$7,800, plus overtime, to update its computer system to collect the assessment and urged the Board to reconsider the amount of reimbursement specified by Regulation 2000; and
- Mandy Lee, Director of Government Affairs for the CRA, reiterated the CRA's comments from Mr. Dombrowski's October 21, 2012, letter, and requested that the CRA be given a further opportunity to substantiate its members' costs.

Therefore, on October 23, 2012, the Board also unanimously voted to begin a Business Taxes Committee process to meet with the interested parties and discuss the adoption of a regulation to permanently specify the amount of reimbursement a retailer may retain for costs associated with the collection of the assessment imposed by PRC section 4629.5 beginning January 1, 2013.

#### NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of Regulation 2000 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

#### NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of Regulation 2000 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

#### EFFECTIVE DATE

The assessment imposed by PRC section 4629.5 will be operative on and after January 1, 2013, and retailers will not be able to retain the reimbursement provided by PRC section 4629.5, subdivision (a)(3) and specified by Regulation 2000 until they begin collecting the assessment on January 1, 2013. Therefore, the Board hereby specifies that Regulation 2000 shall be effective on and after January 1, 2013, pursuant to Government Code section 11346.1, subdivision (d).

#### CONTACT PERSONS

Questions regarding the substance of Regulation 2000 should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at



Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Other inquiries concerning the emergency regulation should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984 , by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

**OFFICE OF ADMINISTRATIVE LAW**

300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
(916) 323-6225 FAX (916) 323-6826



**DEBRA M. CORNEZ**  
Director

**MEMORANDUM**

TO: Richard Bennion  
FROM: OAL Front Desk  
DATE: 11/27/2013  
RE: Return of Approved Rulemaking Materials  
OAL File No. 2013-0617-04EE

OAL hereby returns this file your agency submitted for our review (OAL File No. 2013-0617-04EE regarding Retailer Reimbursement Retention).

Enclosures If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State.

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Enclosures

## PUBLIC HEARING PROCESS

Notice is hereby given that CDPH will hold a public hearing commencing at 10:00 a.m. on Monday, January 28, 2013 in Room 74.463 (Kings Room) 1616 Capitol Avenue, Sacramento, California, at which time any person may present statements or arguments orally or in writing relevant to the action described in this notice. If you plan to attend the Public Hearing, please be sure to bring identification so you can be admitted into the building by the security guard. The Chronic Disease Control Branch, CDPH, 1616 Capitol Avenue, MS 7209, P.O. Box 997377, Sacramento, CA, 95899-7377 must receive any written statements or arguments by 5:00 p.m. October 24, 2011 which is hereby designated as the close of the written comment period. It is requested, but not required, that written statements or arguments be submitted in triplicate.

## CONTACT

Inquiries concerning the action described in this notice may be directed to Ms. Marcia Levy Rosenstein, Prevention 2010 Section, or Caroline Peck, M.D, Chief, Chronic Disease Control Branch, CDPH, at (916) 552-9900 or at [Marcia.Rosenstein@cdph.ca.gov](mailto:Marcia.Rosenstein@cdph.ca.gov). In any such inquiries, please identify the action by using the Department Control letters "PHHSBG."

## AVAILABILITY OF INFORMATION FOR REVIEW

The State Plan will be available for review at 1616 Capitol Avenue, Sacramento, California, from 8:00 a.m. to 5:00 p.m., December 14, 2012 through January 29, 2013.

## DECISION NOT TO PROCEED

### AIR RESOURCES BOARD

#### NOTICE OF DECISION NOT TO PROCEED

#### NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CLEAN FUELS OUTLET REGULATION

By notice dated November 29, 2011, and published in the December 9, 2011, California Regulatory Notice Register, Register 2011, No. 49, the Air Resources Board announced it would conduct a public hearing to

consider amendments to title 13, California Code of Regulations, sections 2300, 2302, 2303, 2303.5, 2304, 2307, 2308, 2309, 2311, 2311.5, 2312, 2313, 2314, 2315 and 2318; repeal of sections 2306, 2310, 2316 and 2317; and adoption of section 2306.1.

**PLEASE BE ADVISED** the proposed rulemaking action has been withdrawn. A new rulemaking action for clean fuel outlets may be initiated in the future, but a hearing date has yet to be determined. Comments submitted in response to the November 29, 2011 notice will not be included in the administrative record for this future rulemaking action, should it occur.

Pursuant to Government Code section 11347, publication of this Notice of Decision Not to Proceed hereby terminates the rulemaking action originally noticed on December 29, 2011, in the California Regulatory Notice Register.

## SUMMARY OF REGULATORY ACTIONS

### REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2012-1128-01  
BOARD OF EQUALIZATION  
Retailer Reimbursement Retention

This is an emergency rulemaking action pursuant to Public Resources Code section 4629.5. It adds section 2000 to Title 18 of the California Code of Regulations, which establishes the reimbursement amount which lumber and engineered wood products retailers may retain to compensate them for the costs associated with the collection of the one-percent-of-sales-price assessment imposed on purchasers of these products and collected by retailers.

Title 18  
California Code of Regulations  
ADOPT: 2000  
Filed 12/04/2012  
Effective 01/01/2013  
Agency Contact:

Richard E. Bennion

(916) 445-2130

**State of California  
Office of Administrative Law**

**In re:**  
**Board of Equalization**

**Regulatory Action:**

**Title 18, California Code of Regulations**

**Adopt sections: 2000**

**Amend sections:**

**Repeal sections:**

**NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION**

**Government Code Sections 11346.1 and  
11349.6**

**OAL File No. 2013-0617-04 EE**

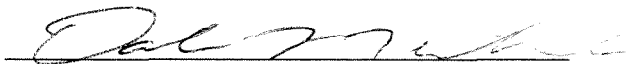
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This rulemaking action readopts for an additional 90 days the emergency regulation which establishes the reimbursement amount which lumber and engineered wood products retailers may retain to compensate them for the costs associated with the collection of the one-percent-of-sales-price assessment imposed on purchasers of these products and collected by retailers.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 6/25/2013 and will expire on 9/24/2013. The Certificate of Compliance for this action is due no later than 9/23/2013.

**Date: 6/25/2013**



**Dale P. Mentink  
Senior Staff Counsel**

**For: DEBRA M. CORNEZ  
Director**

**Original: Cynthia Bridges  
Copy: Richard Bennion**

**RECEIVED**

**JUN 26 2013**

**Board Proceedings**

# EMERGENCY

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW (OAL)  
NOTICE PUBLICATION/REGULATION SUBMISSION (See instructions on reverse)

STD. 400 (REV. 01-2013)

OAL FILE  
NUMBERS

NOTICE FILE NUMBER

Z-

REGULATORY ACTION NUMBER

EMERGENCY NUMBER

2013-0617-04EE

For use by Office of Administrative Law (OAL) only

2013 JUN 17 P 2:10

OFFICE OF  
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
State Board of Equalization

AGENCY FILE NUMBER (If any)

## A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER	PUBLICATION DATE

## B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Retailer Reimbursement Retention		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2012-1128-01E	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT 2000 AMEND REPEAL	
TITLE(S) 18			
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Richard E. Bennion		TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
		E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

June 17, 2013

TYPED NAME AND TITLE OF SIGNATORY

Joann Richmond, Chief, Board Proceedings Division

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 25 2013

Office of Administrative Law

## Title 18. Public Revenues

### Division 2. State Board of Equalization – Business Taxes

#### Chapter 4.1. Lumber Products Assessment

##### **Regulation 2000. Retailer Reimbursement Retention**

Public Resources Code section 4629.5, as added by Statutes 2012, chapter 289, requires the Board of Equalization to adopt a regulation to determine the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by Public Resources Code section 4629.5.

A retailer required to collect the Lumber Products Assessment may retain no more than \$250 per location as reimbursement for startup costs associated with the collection of the assessment. Such reimbursement is to be taken on the retailer's first return on which the Lumber Products Assessment is reported or, if the amount of the collected assessment is less than the allowed reimbursement, on the retailer's next consecutive returns until the allowed reimbursement amount is retained.

"Location" means and is limited to a business location registered under the retailer's seller's permit as of January 1, 2013, where sales of products subject to the assessment are made.

Note: Authority cited: Section 4629.5, Public Resources Code. Reference: Section 4629.5, Public Resources Code.

**ECONOMIC AND FISCAL IMPACT STATEMENT****(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2008)

**See SAM Section 6601 - 6616 for Instructions and Code Citations**

DEPARTMENT NAME State Board of Equalization	CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Retailer Reimbursement Retention		NOTICE FILE NUMBER Z

**ECONOMIC IMPACT STATEMENT****A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)**

1. Check the appropriate box(es) below to indicate whether this regulation:

- |   |  |
|---|--|
| <input type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements   |
| <input type="checkbox"/> b. Impacts small businesses            | <input type="checkbox"/> f. Imposes prescriptive instead of performance  |
| <input type="checkbox"/> c. Impacts jobs or occupations         | <input type="checkbox"/> g. Impacts individuals  |
| <input type="checkbox"/> d. Impacts California competitiveness  | <input checked="" type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) No significant adverse economic impact on business or employees, small business, jobs or occupations.

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: \_\_\_\_\_ Describe the types of businesses (Include nonprofits.): \_\_\_\_\_

Enter the number or percentage of total businesses impacted that are small businesses: \_\_\_\_\_

Enter the number of businesses that will be created: \_\_\_\_\_ eliminated: \_\_\_\_\_

Explain: \_\_\_\_\_

4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional (List areas.): \_\_\_\_\_

5. Enter the number of jobs created: \_\_\_\_\_ or eliminated: \_\_\_\_\_ Describe the types of jobs or occupations impacted: \_\_\_\_\_

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☐ No If yes, explain briefly: \_\_\_\_\_**B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)**

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ \_\_\_\_\_

a. Initial costs for a small business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

b. Initial costs for a typical business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

c. Initial costs for an individual: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

Describe other economic costs that may occur: \_\_\_\_\_



**ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)**

2. If multiple industries are impacted, enter the share of total costs for each industry: \_\_\_\_\_
3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ \_\_\_\_\_
4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: \_\_\_\_\_ and the number of units: \_\_\_\_\_
5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: \_\_\_\_\_
- Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ \_\_\_\_\_

**C. ESTIMATED BENEFITS** (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: \_\_\_\_\_
2. Are the benefits the result of : ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority? Explain: \_\_\_\_\_
3. What are the total statewide benefits from this regulation over its lifetime? \$ \_\_\_\_\_

**D. ALTERNATIVES TO THE REGULATION** (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: \_\_\_\_\_
2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:
- |                |                   |                |
|----------------|-------------------|----------------|
| Regulation:    | Benefit: \$ _____ | Cost: \$ _____ |
| Alternative 1: | Benefit: \$ _____ | Cost: \$ _____ |
| Alternative 2: | Benefit: \$ _____ | Cost: \$ _____ |

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: \_\_\_\_\_
4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☐ No Explain: \_\_\_\_\_

**E. MAJOR REGULATIONS** (Include calculations and assumptions in the rulemaking record.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.

**ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STB 99, Rev. 12/2008)**

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? ☐ Yes ☐ No (If No, skip the rest of this section.)

2. Briefly describe each equally as an effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: \_\_\_\_\_

Alternative 2: \_\_\_\_\_

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

Alternative 1: \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

Alternative 2: \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

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**FISCAL IMPACT STATEMENT**

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A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in \_\_\_\_\_, Budget Act of \_\_\_\_\_ or Chapter \_\_\_\_\_, Statutes of \_\_\_\_\_

☐ b. will be requested in the \_\_\_\_\_ Governor's Budget for appropriation in Budget Act of \_\_\_\_\_  
(FISCAL YEAR)

☐ 2. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in \_\_\_\_\_

☐ b. implements the court mandate set forth by the \_\_\_\_\_  
court in the case of \_\_\_\_\_ vs. \_\_\_\_\_

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. \_\_\_\_\_ at the \_\_\_\_\_  
election; (DATE)

☐ d. is issued only in response to a specific request from the \_\_\_\_\_  
\_\_\_\_\_, which is/are the only local entity(s) affected;

☐ e. will be fully financed from the \_\_\_\_\_ authorized by Section \_\_\_\_\_  
(FEES, REVENUE, ETC.)  
\_\_\_\_\_ of the \_\_\_\_\_ Code;

☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit;

☐ g. creates, eliminates, or changes the penalty for a new crime or infraction contained in \_\_\_\_\_

☐ 3. Savings of approximately \$ \_\_\_\_\_ annually.

☐ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law regulations.

**ECONOMIC AND FISCAL IMPACT STATEMENT *cont.* (STD. 399, Rev. 2-98)**

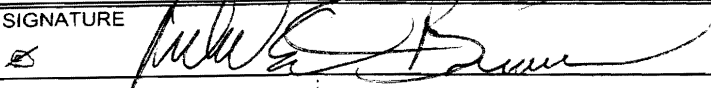

- ☒ 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- ☐ 6. Other.

**B. FISCAL EFFECT ON STATE GOVERNMENT** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year. It is anticipated that State agencies will:
- ☐ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request an increase in the currently authorized budget level for the \_\_\_\_\_ fiscal year.
- ☐ 2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- ☐ 4. Other.

**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☐ 2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- ☐ 4. Other.

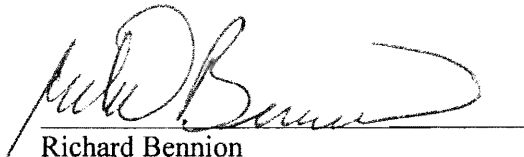
SIGNATURE 		TITLE Regulations Coordinator
AGENCY SECRETARY <sup>1</sup>	 PROGRAM BUDGET MANAGER	DATE 11-27-12
APPROVAL/CONCURRENCE		DATE
DEPARTMENT OF FINANCE <sup>2</sup>	Exempt under SAM section 6660	
APPROVAL/CONCURRENCE		

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
2. Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

## Statement of Compliance

The State Board of Equalization, in process of readopting Special Tax Regulation 2000, *Retailer Reimburement Retention*, did comply with the provision of Government Code section 50(a)(5)(A) confirming statement . A notice to interested parties was mailed on June 7, 2013, 6 workings days prior to being submitted OAL on June 17, 2013.

June 20, 2013

A handwritten signature in black ink, appearing to read "Richard Bennion", written over a horizontal line.

Richard Bennion  
Regulations Coordinator  
State Board of Equalization



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-80  
916-445-2130 • FAX 916-324-3984  
[www.boe.ca.gov](http://www.boe.ca.gov)

BETTY T. YEE  
First District, San Francisco

SEN. GEORGE RUNNER (RET.)  
Second District, Lancaster

MICHELLE STEEL  
Third District, Rolling Hills Estates

JEROME E. HORTON  
Fourth District, Los Angeles

JOHN CHIANG  
State Controller

CYNTHIA BRIDGES  
Executive Director

**June 7, 2013**

**To Interested Parties:**

**Notice of Emergency Action**

**The State Board of Equalization Has Adopted  
California Code of Regulations, Title 18,  
Section 2000, *Retailer Reimbursement Retention***

**NOTICE IS HEREBY GIVEN**

Public Resources Code (PRC) section 4629.5, subdivision (a)(1) imposes a one-percent assessment on purchasers of lumber products and engineered wood products on and after January 1, 2013. PRC section 4629.5, subdivision (a)(3) requires retailers to collect the assessment and provides that retailers “may retain an amount [from the assessments they collect] equal to the amount of reimbursement, as determined by the State Board of Equalization [(Board)] pursuant to regulations, for any costs associated with the collection of the assessment” imposed by subdivision (a)(1). On Tuesday, October 23, 2012, the Board, pursuant to the authority vested in it by PRC section 4629.5, subdivision (a)(3), initially adopted California Code of Regulations, title 18, section (Regulation) 2000, *Retailer Reimbursement Retention*, as an emergency regulation pursuant to Government Code section 11346.1, to specify the amount of reimbursement a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3). On May 22, 2013, the Board readopted Regulation 2000, as an emergency regulation pursuant to Government Code section 11346.1, subdivision (h), without making any changes to the regulation’s text.

**EMERGENCY**

*Statement of Emergency*

PRC section 4629.5, subdivision (a)(3) expressly provides that “For purposes of this paragraph, the State Board of Equalization may adopt emergency regulations pursuant to Section 11346.1 of the Government Code. The adoption of any regulation pursuant to this paragraph shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, and general welfare.” The emergency circumstances are unchanged since the Board’s initial adoption of Regulation 2000.

*Section 48 Statement*

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of the emergency regulation to the Office of Administrative Law (OAL), the Board provide a notice of the emergency regulation to every person who has filed a request for notice of regulatory action with the Board. After submission of the emergency regulation to OAL, OAL shall allow interested persons five calendar days to submit comments on the emergency regulation as set forth in Government Code section 11349.6.

**AUTHORITY & REFERENCE**

PRC section 4629.5

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

*Existing Law*

PRC section 4629.5, as enacted by Assembly Bill No. (AB) 1492 (Stats. 2012, ch. 289), imposes, on and after January 1, 2013, a one-percent assessment on purchasers of lumber products and engineered wood products to be collected by retailers at the time of sale. As enacted by AB 1492, PRC section 4629.5, subdivision (a)(3) authorizes the Board to adopt regulations to determine the amount retailers may retain from the assessments they collect as reimbursement for certain compliance costs. Specifically, PRC section 4629.5, subdivision (a)(3), in relevant part, provides:

The retailer shall collect the assessment from the person [i.e., purchaser] at the time of sale, and may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to regulations, for any costs associated with the collection of the assessment, to be taken on the first return or next consecutive returns until the entire reimbursement amount is retained.

Notably, the statute provides that retailers may only retain the Board-prescribed amount of reimbursement one time, on the retailers' first return or next consecutive returns filed immediately after the retailers are required to begin collecting the assessment on January 1, 2013. The statute does not authorize retailers to retain additional amounts thereafter.

As to legislative history, both the relevant Senate and Assembly floor analyses refer to retailers being reimbursed for "costs to set up collection systems." (See p. 2 of the September 1, 2012, Assembly Floor Analysis of AB 1492 and p.2 of the August 29, 2012, Senate Floor Analysis of AB 1492.) Thus, both the plain language of PRC section 4629.5, subdivision (a)(3) and the available information regarding legislative intent support an interpretation that subdivision (a)(3) provides for affected retailers to retain a one-time amount, as specifically determined by the Board, for reimbursement of costs to set up collection systems prior to the commencement of

their collection duties on January 1, 2013. Therefore, neither the plain language of PRC section 4629.5, subdivision (a)(3) nor the available legislative history persuasively support an interpretation that would allow for the retention of ongoing costs of compliance or of amounts in excess of the Board-specified reimbursement amount.

*Adoption of Emergency Regulation 2000*

The Board added a new chapter 4.1 to division 2 of title 18 of the California Code of Regulations so that any regulations the Board is required to adopt to implement, interpret, and make specific the assessment imposed by PRC section 4629.5, as enacted by AB 1492, can be codified in the new chapter. The Board also voted to adopt Regulation 2000, which is codified in new chapter 4.1, as an emergency regulation, on October 23, 2012, in order to determine the “amount of reimbursement” a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3), when retailers started collecting the assessment on January 1, 2013. Regulation 2000 provides that retailers as of January 1, 2013, may retain collected assessment amounts of up to \$250 per location as reimbursement for one-time, startup costs associated with the collection of the assessment (i.e., the costs to set up collection systems). Specifically, Regulation 2000 provides:

Public Resources Code section 4629.5, as added by Statutes 2012, chapter 289, requires the Board of Equalization to adopt a regulation to determine the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by Public Resources Code section 4629.5.

A retailer required to collect the Lumber Products Assessment may retain no more than \$250 per location as reimbursement for startup costs associated with the collection of the assessment. Such reimbursement is to be taken on the retailer’s first return on which the Lumber Products Assessment is reported or, if the amount of the collected assessment is less than the allowed reimbursement, on the retailer’s next consecutive returns until the allowed reimbursement amount is retained.

“Location” means and is limited to a business location registered under the retailer’s seller’s permit as of January 1, 2013, where sales of products subject to the assessment are made.

Regulation 2000 is anticipated to provide the following benefits:

- Provide certainty as to the amount of reimbursement retailers may retain pursuant to PRC section 4629.5, subdivision (a)(3);
- Permit retailers to retain the amount of reimbursement determined by the Board without requiring retailers to keep additional records or substantiate their individual costs; and
- Preserve the public peace, health, safety, and general welfare, as provided in PRC section 4629.5, subdivision (a)(3).

*Progress Regarding Adoption of Regulation 2000 through Regular Rulemaking Process*

The California Forestry Association supported the initial adoption of Regulation 2000 and the \$250 reimbursement amount established by the regulation. However, other interested parties, including the California Retailers' Association and the West Coast Lumber & Building Material Association (West Cost), argued that affected retailers should receive more reimbursement, including reimbursement on an ongoing basis. Therefore, on October 23, 2012, the Board also unanimously voted to begin a Business Taxes Committee (BTC) process to meet with interested parties and discuss the adoption of a regulation, through the regular rulemaking process, to permanently specify the amount of reimbursement a retailer may retain for costs associated with the collection of the assessment imposed by PRC section 4629.5 beginning January 1, 2013.

As a result, Board staff subsequently issued its first discussion paper regarding the adoption of a permanent regulation on December 18, 2012, and the paper was discussed during an interested parties meeting on January 10, 2013. The first discussion paper provided background information regarding the enactment of AB 1492, the Board's adoption of emergency Regulation 2000, and the interested parties' comments regarding the emergency regulation. The first discussion paper also invited the interested parties to provide further comments regarding the Board's adoption of a permanent regulation.

Board staff issued its second discussion paper regarding the adoption of a permanent regulation on February 22, 2013, and the paper was discussed during an interested parties meeting on March 7, 2013. The second discussion paper presented alternative recommendations, including alternatives proposed by interested parties to increase the reimbursement amount for start-up costs and provide for the retention of an annual amount to reimburse retailers for ongoing costs. For example, the Second Discussion Paper explained that West Coast recommended that the initial reimbursement amount be increased to \$5,500 per retail lumber location for startup costs and that an annual retention amount be established of \$1,500 per retail lumber location. However, staff was not able to reach a consensus with the interested parties regarding the substantive provisions of the permanent regulation during the March 7, 2013, interested parties meeting.

Subsequently, a Chief Counsel Memorandum dated May 2, 2013, was prepared and distributed to the Board for consideration at the May 22, 2013, Board meeting. The memorandum recommended that the Board readopt Regulation 2000, as an emergency regulation, to maintain the status quo while the Board considers the adoption of a permanent regulation to specify the amount of reimbursement a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3). And, the Board Members unanimously voted to readopt Regulation 2000, as an emergency regulation, during the May 22, 2013, Board meeting without making any changes to the regulation's text.

Finally, Board staff prepared Formal Issue Paper 13-003 and distributed it the Board Members on May 31, 2013. The paper contains the following three recommendations:



1. Staff's recommendations that the Board adopt Regulation 2000, through the regular rulemaking process, without making any changes, and that the Board also adopt new Regulation 2001, *Additional Allowed Retailer Reimbursement Retention*, through the regular rulemaking process, to provide that "a retailer required to collect the Lumber Products Assessment may retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, as reimbursement for startup costs associated with the collection of the assessment";
2. An alternative recommendation that the Board only adopt Regulation 2000, through the regular rulemaking process, without making any changes, which is supported by the California Forestry Association, California Native Plant Society, Forests Forever, Pacific Forest Trust, Sierra Club, and the Center for Biological Diversity, and was recommended by California Assemblymembers Bob Blumenfield, Wesley Chesbro, Richard Gordon, Richard Bloom, and Roger Dickinson; and
3. Another alternative recommendation that the Board adopt a regulation, through the regular rulemaking process, that permits retailers to initially retain \$5,500 per retail lumber location and annually retain an additional \$1,500 per location on an ongoing basis, based upon the previously discussed recommendation from West Coast.

The Board is scheduled to consider Formal Issue Paper 13-003 during its BTC meeting on June 11, 2013, and the Board may vote to begin the regular rulemaking process to adopt Regulation 2000, as a permanent regulation, at that time. The forgoing information demonstrates that the Board has made substantial progress and proceeded with due diligence to adopt emergency Regulation 2000 through the regular rulemaking process to comply with the requirements of Government Code section 11346.1, subdivision (e).

#### *No Inconsistent or Incompatible State Regulations*

The Board has performed an evaluation of whether emergency Regulation 2000 is inconsistent or incompatible with existing state regulations and determined that emergency Regulation 2000 is not inconsistent or incompatible with existing state regulations because it is the only existing state regulation prescribing the "amount of reimbursement" a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3).

#### *No Comparable Federal Regulations or Statutes*

There is no federal assessment similar to the assessment imposed by PRC section 4629.5 and there are no comparable federal regulations or statutes to emergency Regulation 2000.

### **DOCUMENTS RELIED UPON AND INTERESTED PARTIES COMMENTS**

The Board relied upon a memorandum from its Chief Counsel, Randy Ferris, dated May 2, 2013, the attachment to the memorandum, and the comments made during the discussion of the

readoption of emergency Regulation 2000 on May 22, 2013, in voting to readopt Regulation 2000 as an emergency regulation.

#### **NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Board has determined that the readoption of emergency Regulation 2000 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

#### **NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS**

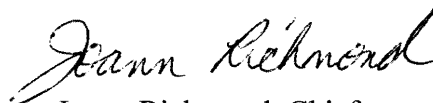
The Board has determined that the readoption of emergency Regulation 2000 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

#### **CONTACT PERSONS**

Questions regarding the substance of emergency Regulation 2000 should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Other inquiries concerning the emergency regulation should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov), or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

Sincerely,



Joann Richmond, Chief  
Board Proceedings Division

JR:reb

## Bennion, Richard

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**From:** BOE-Board Meeting Material  
**Sent:** Friday, June 07, 2013 1:42 PM  
**To:** Alonzo, Mary Ann (Legal); Angeja, Jeff (Legal); Angeles, Joel; Armenta, Christopher; Baetge, Michelle; Bartolo, Lynn; Bennion, Richard; Benson, Bill; Bisauta, Christine (Legal); Blake, Sue; BOE-Board Meeting Material; Bridges, Cynthia; Chung, Sophia (Legal); Davis, Toya P.; Delgado, Maria; Duran, David; Elliott, Claudia; Epolite, Anthony (Legal); Ferris, Randy (Legal); Ford, Ladeena L; Garcia, Laura; Gau, David; Gilman, Todd; Giorgi, Alan; Giorgi, Dolores; Goehring, Teresa; Hale, Mike; Hamilton, Tabitha; Hanohano, Rebecca; Harvill, Mai; He, Mengjun; Heller, Bradley (Legal); Hellmuth, Leila; Herrera, Cristina; Holmes, Dana; Hughes, Shellie L; Jacobson, Andrew; Kinkle, Sherrie L; Kinst, Lynne; Kuhl, James; Lambert, Robert (Legal); Levine, David H. (Legal); LoFaso, Alan; Madrigal, Claudia; Maeng, Elizabeth; Mandel, Marcy Jo; Matsumoto, Sid; McGuire, Jeff; Miller, Brad; Mandel, Marcy Jo @ SCO; Moon, Richard (Legal); Morquecho, Raymond; Nienow, Trecia (Legal); Pielsticker, Michele; Ralston, Natasha; Richmond, Joann; Riley, Denise (Legal); Salgado-Ponce, Sylvia; Schultz, Glenna; Shah, Neil; Silva, Monica; Singh, Sam; Smith, Kevin (Legal); Smith, Rose; Stowers, Yvette; Suero-Gabler, Cynthia; Torres, Rodrigo; Torres, Rodrigo; Tran, Mai (Legal); Treichelt, Tim; Tucker, Robert (Legal); Vasquez, Rosalyn; Vasquez, Rosalyn; Vassar, Alex; Vigil, Michael; Wallentine, Sean; Whitaker, Lynn; White, Sharon; Williams, Lee; Zivkovich, Robert  
**Subject:** State Board of Equalization - Announcement of Readoption of Emergency Regulation 2000

The State Board of Equalization would like to announce that it voted to readopt Regulation 2000, *Retailer Reimbursement Retention*, as an emergency regulation, to maintain the status quo while the Board considers the adoption of a permanent regulation to specify the amount of reimbursement a retailer may retain pursuant to Public Resources Code section 4629.5, subdivision (a)(3).

To view the notice, text, and history click on the following link: [http://www.boe.ca.gov/regs/Emergency\\_Reg\\_2000\\_2012.htm](http://www.boe.ca.gov/regs/Emergency_Reg_2000_2012.htm)

Questions regarding the substance of the new emergency regulation should be directed to Ms. Lynn Whitaker by phone at (916) 324-8483, by email at [Lynn.Whitaker@boe.ca.gov](mailto:Lynn.Whitaker@boe.ca.gov), or by mail at State Board of Equalization, Attn: Lynn Whitaker, 450 N Street, MIC:50, P.O. Box 942879, Sacramento, CA 94279-0050.

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Please do not reply to this message.

Board Proceedings Division, MIC:80  
Rick Bennion  
Regulations Coordinator  
Phone (916) 445-2130  
Fax (916) 324-3984  
[Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov)

**Bennion, Richard**

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**From:** State Board of Equalization - Announcement of Regulatory Change  
<Legal.Regulations@BOE.CA.GOV>  
**Sent:** Friday, June 07, 2013 2:28 PM  
**To:** BOE\_REGULATIONS@LISTSERV.STATE.CA.GOV  
**Subject:** State Board of Equalization - Announcement of Readoption of Emergency Regulation 2000

The State Board of Equalization would like to announce that it voted to readopt Regulation 2000, *Retailer Reimbursement Retention*, as an emergency regulation, to maintain the status quo while the Board considers the adoption of a permanent regulation to specify the amount of reimbursement a retailer may retain pursuant to Public Resources Code section 4629.5, subdivision (a)(3).

To view the notice, text, and history click on the following link: [http://www.boe.ca.gov/regs/Emergency\\_Reg\\_2000\\_2012.htm](http://www.boe.ca.gov/regs/Emergency_Reg_2000_2012.htm)

Questions regarding the substance of the new emergency regulation should be directed to Ms. Lynn Whitaker by phone at (916) 324-8483, by email at [Lynn.Whitaker@boe.ca.gov](mailto:Lynn.Whitaker@boe.ca.gov), or by mail at State Board of Equalization, Attn: Lynn Whitaker, 450 N Street, MIC:50, P.O. Box 942879, Sacramento, CA 94279-0050.

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Please DO NOT REPLY to this message, as it was sent from an "announcement list."

Subscription Information: To unsubscribe from this list please visit the page: <http://www.boe.ca.gov/aprc/index.htm>

Privacy Policy Information: Your information is collected in accordance with our Privacy Policy  
<http://www.boe.ca.gov/info/privacyinfo.htm>

Technical Problems: If you cannot view the link included in the body of this message, please contact the Board's webmaster at [webmaster@boe.ca.gov](mailto:webmaster@boe.ca.gov)

**OFFICE OF ADMINISTRATIVE LAW**

300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
(916) 323-6225 FAX (916) 323-6826



DEBRA M. CORNEZ  
Director

**MEMORANDUM**

TO: Richard Bennion  
FROM: OAL Front Desk LW  
DATE: 11/27/2013  
RE: Return of Approved Rulemaking Materials  
OAL File No. 2013-0913-01EE

OAL hereby returns this file your agency submitted for our review (OAL File No. 2013-0913-01EE regarding Retailer Reimbursement Retention).

Enclosures If this is an approved file, it contains a copy of the regulation(s) stamped “ENDORSED APPROVED” by the Office of Administrative Law and “ENDORSED FILED” by the Secretary of State.

The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped “ENDORSED FILED” by the Secretary of State) as follows:

- (1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
- (2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
- (3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
- (4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption applies concerning the effective date of the regulation approved in this file, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the state agency will contain the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation’s effective date. Additionally, the effective date of the regulation will be noted on OAL’s Web site once OAL posts the Internet Web site link to the full text of the regulation that is received from the state agency. (Gov. Code, secs. 11343 and 11344.)

**Please note this new requirement:** Unless an exemption applies, Government Code section 11343 now requires:

1. **Section 11343(c)(1):** Within 15 days of OAL filing a state agency’s regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.
2. **Section 11343(c)(2):** Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at [postedregslink@oal.ca.gov](mailto:postedregslink@oal.ca.gov).

**NOTE ABOUT EXEMPTIONS.** Posting and linking requirements do not apply to emergency regulations; regulations adopted by FPPC or Conflict of Interest regulations approved by FPPC; and regulations not subject to OAL/APA review. However, an exempt agency may choose to comply with these requirements, and OAL will post the information accordingly.

**DO NOT DISCARD OR DESTROY THIS FILE**

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the State Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

Title 17  
California Code of Regulations  
AMEND: 91022  
Filed 06/26/2013  
Agency Contact: Trini Balcazar (916) 445-9564

File# 2013-0617-04  
BOARD OF EQUALIZATION  
Retailer Reimbursement Retention

This rulemaking action readopts for an additional 90 days the emergency regulation which establishes the reimbursement amount which lumber and engineered wood products retailers may retain to compensate them for the costs associated with the collection of the one-percent-of-sales-price assessment imposed on purchasers of these products and collected by retailers.

Title 18  
California Code of Regulations  
ADOPT: 2000  
Filed 06/25/2013  
Effective 06/25/2013  
Agency Contact:  
Richard E. Bennion (916) 445-2130

File# 2013-0612-03  
BOARD OF FORESTRY AND FIRE PROTECTION  
Section 100 Filing to Correct Existing Regulation  
Section 1059(a)

The Board of Forestry and Fire Protection (BOFFP) submitted this change without regulatory effect to amend title 14, section 1059(a) of the California Code of Regulations (CCR). In 2009 BOFFP adopted amendments to several sections in title 14 of the CCR. These amendments included the deletion of subsections and the re-lettering of the remaining sections. These subsections were cross-referenced in title 14, section 1059(a) of the CCR, but were not updated during the 2009 rulemaking. BOFFP is now correcting those cross-references to reflect the correct subsections.

Title 14  
California Code of Regulations  
AMEND: 1059(a)  
Filed 06/26/2013  
Agency Contact: Eric Huff (916) 616-8643

File# 2013-0515-03  
BOARD OF OCCUPATIONAL THERAPY  
Eliminate OTA Reference "Certified"

This change without regulatory effect by the California Board of Occupational Therapy amends sections of Title 16 to eliminate all references relating to "certificate", "certified", or "certification."

Title 16  
California Code of Regulations  
AMEND: 4102, 4114, 4122, 4141, 4163, 4181  
Filed 06/25/2013  
Agency Contact: Heather Martin (916) 263-2294

File# 2013-0618-01  
DEPARTMENT OF FOOD AND AGRICULTURE  
Section 3435 Asian Citrus Psyllid Interior Quarantine

This emergency regulatory action is a readopt of prior emergency actions (OAL file nos. 2013-0329-02EE and 2012-0904-01E) that amended section 3435(b) to expand the quarantine area for Asian Citrus Psyllid (ACP) by approximately 609 square miles by including the Desert Hot Springs area of Riverside and San Bernardino counties. The effect of the amendment provides authority for the State to perform quarantine activities against ACP within this additional area and existing regulated areas.

Title 3  
California Code of Regulations  
AMEND: 3435(b)  
Filed 06/19/2013  
Effective 06/19/2013  
Agency Contact: Lindsay Rains (916) 654-1017

File# 2013-0508-01  
DEPARTMENT OF FOOD AND AGRICULTURE  
Asian Citrus Psyllid Interior Quarantine

The Department of Food and Agriculture (DFA) submitted this timely certificate of compliance to make permanent the emergency regulations adopted in OAL file no. 2012-1106-01E. This rulemaking amends Title 3, section 3435(b) of the California Code of Regulations to expand the quarantine area currently in the regulation.

Title 3  
California Code of Regulations  
AMEND: 3435(b)  
Filed 06/19/2013  
Effective 06/19/2013  
Agency Contact: Lindsay Rains (916) 654-1017

File# 2013-0516-02  
DEPARTMENT OF FOOD AND AGRICULTURE  
Setting the Commercial Feed License Fee

This regulatory action increases the annual commercial feed license fee from \$300 to \$400 for each manufacturer/distributor location beginning July 1, 2013.

RECEIVED

SEP 25 2013

by EXECUTIVE DIRECTOR'S OFFICE  
STATE BOARD OF EQUALIZATION

State of California  
Office of Administrative Law

In re:  
Board of Equalization

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections: 2000

Amend sections:

Repeal sections:

NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION

Government Code Sections 11346.1 and  
11349.6

OAL File No. 2013-0913-01 EE

This rulemaking action readopts, for an additional 90 days, the emergency regulation which establishes the reimbursement amount which lumber and engineered wood products retailers may retain to compensate them for the costs associated with the collection of the one-percent-of-sales-price assessment imposed on purchasers of these products and collected by retailers.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 9/23/2013 and will expire on 12/24/2013. The Certificate of Compliance for this action is due no later than 12/23/2013.

Date: 9/23/2013



Dale P. Mentink  
Senior Staff Counsel

For: DEBRA M. CORNEZ  
Director

Original: Cynthia Bridges  
Copy: Richard Bennion



## NOTICE PUBLICATION/REGULATIONS SUBMISSION

**EMERGENCY**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2013-0913-01EE</b>
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For use by Office of Administrative Law (OAL) only

2013 SEP 13 AM 10:34  
OFFICE OF  
ADMINISTRATIVE LAW

2013 SEP 23 PM 3:15

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
State Board of Equalization

AGENCY FILE NUMBER (if any)

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Retailer Reimbursement Retention		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) <b>2012-1128-01E, 2013-0617-04EE</b>	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT 2000 AMEND REPEAL	
TITLE(S) 18		per agency request	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Richard E. Bennion		TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
		E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

*Joann Richmond*  
TYPED NAME AND TITLE OF SIGNATORY

September 13, 2013

Joann Richmond, Chief, Board Proceedings Division

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

SEP 25 2013

Office of Administrative Law

## Title 18. Public Revenues

### Division 2. State Board of Equalization – Business Taxes

#### Chapter 4.1. Lumber Products Assessment

##### **Regulation 2000. Retailer Reimbursement Retention**

Public Resources Code section 4629.5, as added by Statutes 2012, chapter 289, requires the Board of Equalization to adopt a regulation to determine the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by Public Resources Code section 4629.5.

A retailer required to collect the Lumber Products Assessment may retain no more than \$250 per location as reimbursement for startup costs associated with the collection of the assessment. Such reimbursement is to be taken on the retailer's first return on which the Lumber Products Assessment is reported or, if the amount of the collected assessment is less than the allowed reimbursement, on the retailer's next consecutive returns until the allowed reimbursement amount is retained.

"Location" means and is limited to a business location registered under the retailer's seller's permit as of January 1, 2013, where sales of products subject to the assessment are made.

Note: Authority cited: Section 4629.5, Public Resources Code. Reference: Section 4629.5, Public Resources Code.

# Memorandum

To : Lori Welton  
Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

Date: September 13, 2013

From : Richard Bennion  
Regulations Coordinator  
Board Proceedings Division, MIC: 80

Subject : *OAL File No. 2013-0913-01EE*  
*Regulation 2000, Retailer Reimburement Retention*

The Office of Administrative Law (OAL) is authorized to make the following substitutions and corrections in connection with the above-referenced rulemaking files:

1. In box B. 1b on the form 400, please change the first file number from 5012-1128-01E to 2012-1128-01E.

If you have any questions or comments, please notify me at (916) 445-2130 or email at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov).

REB



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-80  
916-445-2130 • FAX 916-324-3984  
[www.boe.ca.gov](http://www.boe.ca.gov)

BETTY T. YEE  
First District, San Francisco

SEN. GEORGE RUNNER (RET.)  
Second District, Lancaster

MICHELLE STEEL  
Third District, Rolling Hills Estates

JEROME E. HORTON  
Fourth District, Los Angeles

JOHN CHIANG  
State Controller

CYNTHIA BRIDGES  
Executive Director

**September 3, 2013**

**To Interested Parties:**

**Notice of Emergency Action**

**The State Board of Equalization Has Readopted  
California Code of Regulations, Title 18, Section 2000,  
*Retailer Reimbursement Retention*, for the Second Time**

**NOTICE IS HEREBY GIVEN**

Public Resources Code (PRC) section 4629.5, subdivision (a)(1) imposes a one-percent assessment on purchasers of lumber products and engineered wood products on and after January 1, 2013. PRC section 4629.5, subdivision (a)(3) requires retailers to collect the assessment and provides that retailers “may retain an amount [from the assessments they collect] equal to the amount of reimbursement, as determined by the State Board of Equalization [(Board)] pursuant to regulations, for any costs associated with the collection of the assessment” imposed by subdivision (a)(1). On Tuesday, October 23, 2012, the Board, pursuant to the authority vested in it by PRC section 4629.5, subdivision (a)(3), initially adopted California Code of Regulations, title 18, section (Regulation) 2000, *Retailer Reimbursement Retention*, as an emergency regulation pursuant to Government Code section 11346.1, to specify the amount of reimbursement a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3). On May 22, 2013, the Board readopted Regulation 2000, as an emergency regulation pursuant to Government Code section 11346.1, subdivision (h), without making any changes to the regulation’s text. On August 13, 2013, the Board readopted Regulation 2000 for the second time, as an emergency regulation pursuant to Government Code section 11346.1, subdivision (h), without making any changes to the regulation’s text.

**EMERGENCY**

*Statement of Emergency*

PRC section 4629.5, subdivision (a)(3) expressly provides that “For purposes of this paragraph, the State Board of Equalization may adopt emergency regulations pursuant to Section 11346.1 of the Government Code. The adoption of any regulation pursuant to this paragraph shall be deemed to be an emergency and necessary for the immediate preservation of the public peace,

health, and safety, and general welfare.” The emergency circumstances are unchanged since the Board’s initial adoption of Regulation 2000 and the Board’s first readoption of Regulation 2000.

*Section 48 Statement*

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of the emergency regulation to the Office of Administrative Law (OAL), the Board provide a notice of the emergency regulation to every person who has filed a request for notice of regulatory action with the Board. After submission of the emergency regulation to OAL, OAL shall allow interested persons five calendar days to submit comments on the emergency regulation as set forth in Government Code section 11349.6.

**AUTHORITY & REFERENCE**

PRC section 4629.5

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

*Existing Law*

PRC section 4629.5, as enacted by Assembly Bill No. (AB) 1492 (Stats. 2012, ch. 289), imposes, on and after January 1, 2013, a one-percent assessment on purchasers of lumber products and engineered wood products to be collected by retailers at the time of sale. As enacted by AB 1492, PRC section 4629.5, subdivision (a)(3) authorizes the Board to adopt regulations to determine the amount retailers may retain from the assessments they collect as reimbursement for certain compliance costs. Specifically, PRC section 4629.5, subdivision (a)(3), in relevant part, provides:

The retailer shall collect the assessment from the person [i.e., purchaser] at the time of sale, and may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to regulations, for any costs associated with the collection of the assessment, to be taken on the first return or next consecutive returns until the entire reimbursement amount is retained.

Notably, the statute provides that retailers may only retain the Board-prescribed amount of reimbursement one time, on the retailers’ first return or next consecutive returns filed immediately after the retailers are required to begin collecting the assessment on January 1, 2013. The statute does not authorize retailers to retain additional amounts thereafter.

As to legislative history, both the relevant Senate and Assembly floor analyses refer to retailers being reimbursed for “costs to set up collection systems.” (See p. 2 of the September 1, 2012, Assembly Floor Analysis of AB 1492 and p.2 of the August 29, 2012, Senate Floor Analysis of AB 1492.) Thus, both the plain language of PRC section 4629.5, subdivision (a)(3) and the available information regarding legislative intent support an interpretation that subdivision (a)(3)

provides for affected retailers to retain a one-time amount, as specifically determined by the Board, for reimbursement of costs to set up collection systems prior to the commencement of their collection duties on January 1, 2013. Therefore, neither the plain language of PRC section 4629.5, subdivision (a)(3) nor the available legislative history persuasively support an interpretation that would allow for the retention of ongoing costs of compliance or of amounts in excess of the Board-specified reimbursement amount.

*Adoption of Emergency Regulation 2000*

The Board added a new chapter 4.1 to division 2 of title 18 of the California Code of Regulations so that any regulations the Board is required to adopt to implement, interpret, and make specific the assessment imposed by PRC section 4629.5, as enacted by AB 1492, can be codified in the new chapter. The Board also voted to adopt Regulation 2000, which is codified in new chapter 4.1, as an emergency regulation, on October 23, 2012, in order to determine the “amount of reimbursement” a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3), when retailers started collecting the assessment on January 1, 2013. Regulation 2000 provides that retailers as of January 1, 2013, may retain collected assessment amounts of up to \$250 per location as reimbursement for one-time, startup costs associated with the collection of the assessment (i.e., the costs to set up collection systems). Specifically, Regulation 2000 provides:

Public Resources Code section 4629.5, as added by Statutes 2012, chapter 289, requires the Board of Equalization to adopt a regulation to determine the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by Public Resources Code section 4629.5.

A retailer required to collect the Lumber Products Assessment may retain no more than \$250 per location as reimbursement for startup costs associated with the collection of the assessment. Such reimbursement is to be taken on the retailer’s first return on which the Lumber Products Assessment is reported or, if the amount of the collected assessment is less than the allowed reimbursement, on the retailer’s next consecutive returns until the allowed reimbursement amount is retained.

“Location” means and is limited to a business location registered under the retailer’s seller’s permit as of January 1, 2013, where sales of products subject to the assessment are made.

Regulation 2000 is anticipated to provide the following benefits:

- Provide certainty as to the amount of reimbursement retailers may retain pursuant to PRC section 4629.5, subdivision (a)(3);
- Permit retailers to retain the amount of reimbursement determined by the Board without requiring retailers to keep additional records or substantiate their individual costs; and

- Preserve the public peace, health, safety, and general welfare, as provided in PRC section 4629.5, subdivision (a)(3).

*Discussions with Interested Parties Regarding Adoption of Regulation 2000 through Regular Rulemaking Process*

The California Forestry Association supported the initial adoption of Regulation 2000 and the \$250 reimbursement amount established by the regulation. However, other interested parties, including the California Retailers' Association and the West Coast Lumber & Building Material Association (West Cost), argued that affected retailers should receive more reimbursement, including reimbursement on an ongoing basis. Therefore, on October 23, 2012, the Board also unanimously voted to begin a Business Taxes Committee (BTC) process to meet with interested parties and discuss the adoption of a regulation, through the regular rulemaking process, to permanently specify the amount of reimbursement a retailer may retain for costs associated with the collection of the assessment imposed by PRC section 4629.5 beginning January 1, 2013.

As a result, Board staff subsequently issued its first discussion paper regarding the adoption of a permanent regulation on December 18, 2012, and the paper was discussed during an interested parties meeting on January 10, 2013. The first discussion paper provided background information regarding the enactment of AB 1492, the Board's adoption of emergency Regulation 2000, and the interested parties' comments regarding the emergency regulation. The first discussion paper also invited the interested parties to provide further comments regarding the Board's adoption of a permanent regulation.

Board staff issued its second discussion paper regarding the adoption of a permanent regulation on February 22, 2013, and the paper was discussed during an interested parties meeting on March 7, 2013. The second discussion paper presented alternative recommendations, including alternatives proposed by interested parties to increase the reimbursement amount for start-up costs and provide for the retention of an annual amount to reimburse retailers for ongoing costs. For example, the Second Discussion Paper explained that West Coast recommended that the initial reimbursement amount be increased to \$5,500 per retail lumber location for startup costs and that an annual retention amount be established of \$1,500 per retail lumber location. However, staff was not able to reach a consensus with the interested parties regarding the substantive provisions of the permanent regulation during the March 7, 2013, interested parties meeting.

*First Readoption of Emergency Regulation 2000*

Board staff prepared a Chief Counsel Memorandum dated May 2, 2013, and distributed to the Board Members for consideration at the May 22, 2013, Board meeting. The memorandum recommended that the Board readopt Regulation 2000, as an emergency regulation, to maintain the status quo while the Board considers the adoption of a permanent regulation to specify the amount of reimbursement a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3).

The Board Members unanimously voted to readopt Regulation 2000, as an emergency regulation, during the May 22, 2013, Board meeting without making any changes to the regulation's text. OAL subsequently approved the readoption on June 25, 2013, and OAL indicated that readopted emergency Regulation 2000 will expire on September 24, 2013, without further action by the Board.

*June 11, 2013, BTC Meeting*

Board staff prepared Formal Issue Paper 13-003 and distributed it the Board Members on May 31, 2013. The paper contained the following three recommendations:

1. Staff's recommendations that the Board adopt Regulation 2000, through the regular rulemaking process, without making any changes, and that the Board also adopt new Regulation 2001, *Additional Allowed Retailer Reimbursement Retention*, through the regular rulemaking process, to provide that "a retailer required to collect the Lumber Products Assessment may retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, as reimbursement for startup costs associated with the collection of the assessment";
2. An alternative recommendation that the Board only adopt Regulation 2000, through the regular rulemaking process, without making any changes, which is supported by the California Forestry Association, California Native Plant Society, Forests Forever, Pacific Forest Trust, Sierra Club, and the Center for Biological Diversity, and was recommended by California Assemblymembers Bob Blumenfield, Wesley Chesbro, Richard Gordon, Richard Bloom, and Roger Dickinson; and
3. Another alternative recommendation that the Board adopt a regulation, through the regular rulemaking process, that permits retailers to initially retain \$5,500 per retail lumber location and annually retain an additional \$1,500 per location on an ongoing basis, based upon the previously discussed recommendation from West Coast.

The Board consider Formal Issue Paper 13-003 during its BTC meeting on June 11, 2013, and the Board voted to begin the regular rulemaking process to adopt Regulation 2000, without making any changes, and also to adopt new Regulation 2001 to provide that "a retailer required to collect the Lumber Products Assessment may retain \$485 per location, in addition to the \$250 allowed by Regulation 2000, as reimbursement for startup costs associated with the collection of the assessment." Therefore, the Board published a notice regarding the proposed adoption of Regulations 2000 and 2001 through the regular rulemaking process in the California Notice Register on July 26, 2013, and scheduled a public hearing regarding the proposed adoption of Regulations 2000 and 2001 for September 11, 2013.

*Second Readoption of Emergency Regulation 2000*

Finally, Board staff prepared a Chief Counsel Memorandum dated July 23, 2013, and distributed to the Board Members for consideration at the August 13, 2013, Board meeting. The



memorandum recommended that the Board readopt Regulation 2000, as an emergency regulation, for the second time, to maintain the status quo while the Board considers the adoption of permanent Regulations 2000 and 2001 to specify the amount of reimbursement a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3). And, the Board Members unanimously voted to readopt Regulation 2000, as an emergency regulation, for the second time, during the August 13, 2013, Board meeting without making any changes to the regulation's text.

The forgoing information demonstrates that the Board has made substantial progress and proceeded with due diligence to adopt emergency Regulation 2000 through the regular rulemaking process to comply with the requirements of Government Code section 11346.1, subdivision (e).

#### *No Inconsistent or Incompatible State Regulations*

The Board has performed an evaluation of whether emergency Regulation 2000 is inconsistent or incompatible with existing state regulations and determined that emergency Regulation 2000 is not inconsistent or incompatible with existing state regulations because it is the only existing state regulation prescribing the "amount of reimbursement" a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3).

#### *No Comparable Federal Regulations or Statutes*

There is no federal assessment similar to the assessment imposed by PRC section 4629.5 and there are no comparable federal regulations or statutes to emergency Regulation 2000.

### **DOCUMENTS RELIED UPON AND INTERESTED PARTIES COMMENTS**

The Board relied upon a memorandum from its Chief Counsel, Randy Ferris, dated July 23, 2013, the attachment to the memorandum, and the comments made during the Board's discussion of the readoption of emergency Regulation 2000 on August 13, 2013, in voting to readopt Regulation 2000, as an emergency regulation, for the second time.

### **NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Board has determined that the second readoption of emergency Regulation 2000 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

### **NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS**

The Board has determined that the second readoption of emergency Regulation 2000 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school

September 3, 2013

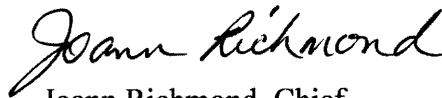
districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

## CONTACT PERSONS

Questions regarding the substance of emergency Regulation 2000 should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Other inquiries concerning the emergency regulation should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984 , by e-mail at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov), or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

Sincerely,

A handwritten signature in black ink that reads "Joann Richmond". The signature is fluid and cursive, with the first name "Joann" and last name "Richmond" clearly distinguishable.

Joann Richmond, Chief  
Board Proceedings Division

JR:reb

Text of California Code of Regulations, Title 18, Section 2000,  
Retailer Reimbursement Retention, as Readopted by the State Board of Equalization

Title 18. Public Revenues

Division 2. State Board of Equalization – Business Taxes

Chapter 4.1. Lumber Products Assessment

**Regulation 2000. Retailer Reimbursement Retention**

Public Resources Code section 4629.5, as added by Statutes 2012, chapter 289, requires the Board of Equalization to adopt a regulation to determine the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by Public Resources Code section 4629.5.

A retailer required to collect the Lumber Products Assessment may retain no more than \$250 per location as reimbursement for startup costs associated with the collection of the assessment. Such reimbursement is to be taken on the retailer's first return on which the Lumber Products Assessment is reported or, if the amount of the collected assessment is less than the allowed reimbursement, on the retailer's next consecutive returns until the allowed reimbursement amount is retained.

"Location" means and is limited to a business location registered under the retailer's seller's permit as of January 1, 2013, where sales of products subject to the assessment are made.

Note: Authority cited: Section 4629.5, Public Resources Code. Reference: Section 4629.5, Public Resources Code.

## Statement of Compliance

The State Board of Equalization, in process of readopting Special Tax Regulation 2000, *Retailer Reimburement Retention*, did comply with the provision of Government Code section 50(a)(5)(A) confirming statement . A notice to interested parties was mailed on September 3, 2013, 8 workings days prior to being submitted OAL on September 13, 2013.

September 13, 2013

A handwritten signature in black ink, appearing to read "Richard Bennion", written over a horizontal line.

Richard Bennion  
Regulations Coordinator  
State Board of Equalization

**Bennion, Richard**

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**From:** State Board of Equalization - Announcement of Regulatory Change  
<Legal.Regulations@BOE.CA.GOV>  
**Sent:** Tuesday, September 03, 2013 12:02 PM  
**To:** BOE\_REGULATIONS@LISTSERV.STATE.CA.GOV  
**Subject:** State Board of Equalization - Announcement of Readoption of Emergency Regulation 2000

The State Board of Equalization would like to announce that it voted to readopt Regulation 2000, *Retailer Reimbursement Retention*, as an emergency regulation, for the second time, to maintain the status quo while the Board considers the adoption of a permanent regulation or regulations to specify the amount of reimbursement a retailer may retain pursuant to Public Resources Code section 4629.5, subdivision (a)(3).

To view the notice, text, and history click on the following link: [http://www.boe.ca.gov/regs/Emergency\\_Reg\\_2000\\_2012.htm](http://www.boe.ca.gov/regs/Emergency_Reg_2000_2012.htm)

Questions regarding the substance of the new emergency regulation should be directed to Ms. Lynn Whitaker by phone at (916) 324-8483, by email at [Lynn.Whitaker@boe.ca.gov](mailto:Lynn.Whitaker@boe.ca.gov), or by mail at State Board of Equalization, Attn: Lynn Whitaker, 450 N Street, MIC:50, P.O. Box 942879, Sacramento, CA 94279-0050.

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Technical Problems: If you cannot view the link included in the body of this message, please contact the Board's webmaster at [webmaster@boe.ca.gov](mailto:webmaster@boe.ca.gov)

## Bennion, Richard

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**From:** BOE-Board Meeting Material  
**Sent:** Tuesday, September 03, 2013 10:56 AM  
**To:** Alonzo, Mary Ann (Legal); Angeja, Jeff (Legal); Angeles, Joel; Armenta, Christopher; Baetge, Michelle; Bartolo, Lynn; Bennion, Richard; Benson, Bill; Bisauta, Christine (Legal); Blake, Sue; BOE-Board Meeting Material; Boyle, Kevin; Bridges, Cynthia; Chung, Sophia (Legal); Cruz, Giovan; Davis, Toya P.; Delgado, Maria; Duran, David; Elliott, Claudia; Epolite, Anthony (Legal); Ferris, Randy (Legal); Ford, Ladeena L; Garcia, Laura; Gau, David; Gilman, Todd; Giorgi, Alan; Giorgi, Dolores; Goehring, Teresa; Hale, Mike; Hamilton, Tabitha; Hanohano, Rebecca; Harvill, Mai; He, Mengjun; Heller, Bradley (Legal); Hellmuth, Leila; Herrera, Cristina; Holmes, Dana; Hughes, Shellie L; Jacobson, Andrew; Kinkle, Sherrie L; Kinst, Lynne; Kruckenberg, Kendra; Kuhl, James; Lambert, Robert (Legal); Levine, David H. (Legal); LoFaso, Alan; Madrigal, Claudia; Maeng, Elizabeth; Mandel, Marcy Jo; Matsumoto, Sid; McGuire, Jeff; Miller, Brad; Mandel, Marcy Jo @ SCO; Moon, Richard (Legal); Morquecho, Raymond; Nienow, Trecia (Legal); Oakes, Clifford; Pielsticker, Michele; Ralston, Natasha; Richmond, Joann; Riley, Denise (Legal); Salgado-Ponce, Sylvia; Schultz, Glenna; Shah, Neil; Silva, Monica (Legal); Singh, Sam; Smith, Kevin (Legal); Smith, Rose; Stowers, Yvette; Suero-Gabler, Cynthia; Torres, Rodrigo; Torres, Rodrigo; Tran, Mai (Legal); Treichelt, Tim; Tucker, Robert (Legal); Vasquez, Rosalyn; Vigil, Michael; Wallentine, Sean; Whitaker, Lynn; White, Sharon; Williams, Lee; Zivkovich, Robert  
**Subject:** State Board of Equalization - Announcement of Readoption of Emergency Regulation 2000

The State Board of Equalization would like to announce that it voted to readopt Regulation 2000, *Retailer Reimbursement Retention*, as an emergency regulation, for the second time, to maintain the status quo while the Board considers the adoption of a permanent regulation or regulations to specify the amount of reimbursement a retailer may retain pursuant to Public Resources Code section 4629.5, subdivision (a)(3).

To view the notice, text, and history click on the following link: [http://www.boe.ca.gov/regs/Emergency\\_Reg\\_2000\\_2012.htm](http://www.boe.ca.gov/regs/Emergency_Reg_2000_2012.htm)

Questions regarding the substance of the new emergency regulation should be directed to Ms. Lynn Whitaker by phone at (916) 324-8483, by email at [Lynn.Whitaker@boe.ca.gov](mailto:Lynn.Whitaker@boe.ca.gov), or by mail at State Board of Equalization, Attn: Lynn Whitaker, 450 N Street, MIC:50, P.O. Box 942879, Sacramento, CA 94279-0050.

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Please do not reply to this message.

Board Proceedings Division, MIC:80  
Rick Bennion  
Regulations Coordinator  
Phone (916) 445-2130  
Fax (916) 324-3984  
[Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov)

## Bennion, Richard

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**From:** State Board of Equalization - Announcement of Regulatory Change  
**Sent:** Tuesday, September 03, 2013 12:02 PM  
**To:** 'abegolomb@yahoo.com'; 'ackoch@sbcglobal.net'; 'AKugler@mayerbrown.com'; Vassar, Alex; 'amiele@mpaa.org'; 'bdombrowski@calretailers.com'; 'bmaterials@aol.com'; 'Bobb@big-creek.com'; 'Brenda.Narayan@MuniServices.com'; 'brent.fraser@caseywood.com'; 'Brent.Johnson@hlcbbishop.com'; 'Bryan.cash@resources.ca.gov'; 'btoman@reedsmith.com'; 'carlsend@84lumber.com'; 'carol@lamesalumber.com'; 'cathy@md-astc.com'; 'ccooper@salestaxpros.com'; 'ccraft@kpmg.com'; 'cmicheli@apreamicheli.com'; 'cmicheli@apreamicheli.com'; 'connie@brucebauer.com'; 'craigevans@learnedlumber.com'; 'darryl@brucebauer.com'; 'dave@caltax.org'; 'david.snieszko@ey.com'; 'david@emanuelsjones.com'; 'davidb@foresthealth.org'; 'dbuaas@contractmgmt.com'; 'dcarrigg@cacities.org'; 'defox@deloitte.com'; 'denise.o.ruwe@exxonmobil.com'; 'drennie@deloitte.com'; 'fran.mancia@muniservices.com'; 'FRANCISCO\_URIBE@homedepot.com'; 'gabystrom@msn.com'; 'Gentry,'; Rodriguez, Gina; 'goyee@meeks.com'; 'GPG@Surewest.net'; 'gturmer@cost.org'; 'Gwen.evans@ryan.com'; 'hfine@labusinessjournal.com'; 'jacklyn.m.thomas@exxonmobil.com'; 'james.b.levinson@us.pwc.com'; 'james.speed@thompson-tax.com'; 'Jana.Bohlman@safeway.com'; 'janis.varney@muniservices.com'; 'jaugustine@biologicaldiversity.org'; 'jbholat@equityrs.com'; 'jeff'; 'jeffreyvarga@paulhastings.com'; 'jeffreyvarga@paulhastings.com'; 'jenebernard@kpmg.com'; 'jennifer.barrera@calchamber.com'; 'jeremy.merz@calchamber.com'; 'jfrench@sanjoaquinlumber.com'; 'jgamper@cfbf.com'; CSAC-Hurst; 'joan.armenta-roberts@us.pwc.com'; 'johanklehs@comcast.net'; 'joseph@salestaxexpert.net'; 'jvanburkleo@costco.com'; 'kaimickey@salestaxspecialists.com'; 'kelly.l.gibson@exxonmobil.com'; 'kend@lumberassociation.org'; 'kenm@big-creek.com'; 'krozario@deloitte.com'; 'lbrown@kscsacramento.com'; 'lga@cal.net'; 'luke@forestsforever.org'; 'Lynn@dubug7.com'; 'Lynn\_Monsalvatge@HomeDepot.com'; 'maggie@nicholslumber.com'; 'Mario.debernardo@asm.ca.gov'; 'Martha.Guzman-Aceves@gov.ca.gov'; 'matt@meadclark.com'; 'mdakessian@reedsmith.com'; 'mhendrick@collinsco.com'; 'mira@politicalsolutions.us'; 'mjani@mendoco.com'; 'mlee@calretailers.com'; 'mslobby@earthlink.net'; 'ncremers@cfbf.com'; 'ninak@calforests.org'; 'philipplant@comcast.net'; 'pmason@pacificforest.org'; 'PRecht@mayerbrown.com'; 'pwilliams@calretailers.com'; 'rhalverson@halversontax.com'; 'rob.fitzpatrick@sprucecomputer.com'; 'Robert.Wils@muniservices.com'; 'robertecendejas@aol.com'; 'roy.hui@thompson-tax.com'; 'royd.baik@dsfgroup.com'; 'rrichman@deloitte.com'; 'rschrotenboer@fenwick.com'; 'RSturdivant@hdlcompanies.com'; 'soldroyd@bdo.com'; 'spencer@agamsi.com'; 'Stacey.matthew@us.gt.com'; 'steve.foti@thompson-tax.com'; 'steve@politicalsolutions.us'; 'steven.cabrera@us.gt.com'; 'sylvieP@ttlco.com'; Casazza, Teresa; 'thompson@msn.com'; 'tpolley@apataxlaw.com'; 'tsnethen@myerstiresupply.com'; 'turkovichl@84lumber.com'; 'vern@cal.net'; 'wade.downey@dsfgroup.com'; 'wlasher@ebay.com'; 'yujin.weng@adp.com'; Stowers, Yvette  
**Subject:** State Board of Equalization - Announcement of Readoption of Emergency Regulation 2000

The State Board of Equalization would like to announce that it voted to readopt Regulation 2000, *Retailer Reimbursement*

*Retention*, as an emergency regulation, for the second time, to maintain the status quo while the Board considers the adoption of a permanent regulation or regulations to specify the amount of reimbursement a retailer may retain pursuant to Public Resources Code section 4629.5, subdivision (a)(3).

To view the notice, text, and history click on the following  
link: [http://www.boe.ca.gov/regs/Emergency\\_Reg\\_2000\\_2012.htm](http://www.boe.ca.gov/regs/Emergency_Reg_2000_2012.htm)

Questions regarding the substance of the new emergency regulation should be directed to Ms. Lynn Whitaker by phone at (916) 324-8483, by email at [Lynn.Whitaker@boe.ca.gov](mailto:Lynn.Whitaker@boe.ca.gov), or by mail at State Board of Equalization, Attn: Lynn Whitaker, 450 N Street, MIC:50, P.O. Box 942879, Sacramento, CA 94279-0050.

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**ECONOMIC AND FISCAL IMPACT STATEMENT****(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2008)

*See SAM Section 6601 - 6616 for Instructions and Code Citations*

STATEMENT NAME State Board of Equalization	CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Retailer Reimbursement Retention		NOTICE FILE NUMBER Z 2012-1128-CIE

**ECONOMIC IMPACT STATEMENT****A. ESTIMATED PRIVATE SECTOR COST IMPACTS** (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

- |   |  |
|---|--|
| <input type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements   |
| <input type="checkbox"/> b. Impacts small businesses            | <input type="checkbox"/> f. Imposes prescriptive instead of performance  |
| <input type="checkbox"/> c. Impacts jobs or occupations         | <input type="checkbox"/> g. Impacts individuals  |
| <input type="checkbox"/> d. Impacts California competitiveness  | <input checked="" type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) No significant adverse economic impact on business or employees, small business, jobs or occupations.

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: \_\_\_\_\_ Describe the types of businesses (Include nonprofits.): \_\_\_\_\_

Enter the number or percentage of total businesses impacted that are small businesses: \_\_\_\_\_

\*er the number of businesses that will be created: \_\_\_\_\_ eliminated: \_\_\_\_\_

ain: \_\_\_\_\_

4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional (List areas.): \_\_\_\_\_

5. Enter the number of jobs created: \_\_\_\_\_ or eliminated: \_\_\_\_\_ Describe the types of jobs or occupations impacted: \_\_\_\_\_

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☐ No If yes, explain briefly: \_\_\_\_\_**B. ESTIMATED COSTS** (Include calculations and assumptions in the rulemaking record.)

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ \_\_\_\_\_

a. Initial costs for a small business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

b. Initial costs for a typical business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

c. Initial costs for an individual: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

Describe other economic costs that may occur: \_\_\_\_\_

**ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)**

2. If multiple industries are impacted, enter the share of total costs for each industry: \_\_\_\_\_
3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ \_\_\_\_\_
4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: \_\_\_\_\_ and the number of units: \_\_\_\_\_
5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: \_\_\_\_\_
- Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ \_\_\_\_\_

**C. ESTIMATED BENEFITS** (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: \_\_\_\_\_
2. Are the benefits the result of : ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority? Explain: \_\_\_\_\_
3. What are the total statewide benefits from this regulation over its lifetime? \$ \_\_\_\_\_

**D. ALTERNATIVES TO THE REGULATION** (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: \_\_\_\_\_
2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:
- |                |                   |                |
|----------------|-------------------|----------------|
| Regulation:    | Benefit: \$ _____ | Cost: \$ _____ |
| Alternative 1: | Benefit: \$ _____ | Cost: \$ _____ |
| Alternative 2: | Benefit: \$ _____ | Cost: \$ _____ |

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: \_\_\_\_\_
4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☐ No Explain: \_\_\_\_\_

**E. MAJOR REGULATIONS** (Include calculations and assumptions in the rulemaking record.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.

**ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)**

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million ? ☐ Yes ☐ No (If No, skip the rest of this section.)

Describe each equally as an effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: \_\_\_\_\_

Alternative 2: \_\_\_\_\_

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation:	\$ _____	Cost-effectiveness ratio: \$ _____
Alternative 1:	\$ _____	Cost-effectiveness ratio: \$ _____
Alternative 2:	\$ _____	Cost-effectiveness ratio: \$ _____

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**FISCAL IMPACT STATEMENT**

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**A. FISCAL EFFECT ON LOCAL GOVERNMENT** (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in \_\_\_\_\_, Budget Act of \_\_\_\_\_ or Chapter \_\_\_\_\_, Statutes of \_\_\_\_\_

☐ b. will be requested in the \_\_\_\_\_ Governor's Budget for appropriation in Budget Act of \_\_\_\_\_  
(FISCAL YEAR)

Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in \_\_\_\_\_

☐ b. implements the court mandate set forth by the \_\_\_\_\_  
court in the case of \_\_\_\_\_ vs. \_\_\_\_\_

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. \_\_\_\_\_ at the \_\_\_\_\_  
election; (DATE)

☐ d. is issued only in response to a specific request from the \_\_\_\_\_  
\_\_\_\_\_, which is/are the only local entity(s) affected;

☐ e. will be fully financed from the \_\_\_\_\_ authorized by Section \_\_\_\_\_  
(FEES, REVENUE, ETC.)  
\_\_\_\_\_ of the \_\_\_\_\_ Code;

☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit;

☐ g. creates, eliminates, or changes the penalty for a new crime or infraction contained in \_\_\_\_\_

Savings of approximately \$ \_\_\_\_\_ annually.

☐ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law regulations.

**ECONOMIC AND FISCAL IMPACT STATEMENT *cont.* (STD. 399, Rev. 2-98)**

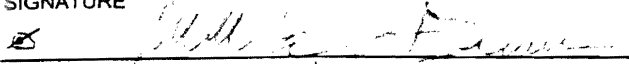

- ☒ 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- ☐ 6. Other.

**B. FISCAL EFFECT ON STATE GOVERNMENT** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year. It is anticipated that State agencies will:
- ☐ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request an increase in the currently authorized budget level for the \_\_\_\_\_ fiscal year.
- ☐ 2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- ☐ 4. Other.

**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☐ 2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- ☐ 4. Other.

SIGNATURE		TITLE
		Regulations Coordinator
AGENCY SECRETARY <sup>1</sup>		DATE
APPROVAL/CONCURRENCE		11-27-12
DEPARTMENT OF FINANCE <sup>2</sup>	PROGRAM BUDGET MANAGER	DATE
APPROVAL/CONCURRENCE	Exempt under SAM section 6660	

- The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
- Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

## AVAILABILITY OF INDEX OF PRECEDENTIAL DECISIONS

### BOARD OF PHARMACY

#### NOTICE OF AVAILABILITY OF PRECEDENTIAL DECISIONS AND DECISION INDEX

NOTICE IS HEREBY GIVEN that the California State Board of Pharmacy (Board), pursuant to section 11425.60 of the Government Code, adopted precedential decision number 2013-01 pertaining to general conduct related to practice. The Board maintains an index of precedential decisions, which is annually made available by the Board to the public by e-mail subscription. To join the Board's e-mail list, go to [www.pharmacy.ca.gov](http://www.pharmacy.ca.gov). The index and the text of the precedent decisions are continuously available on the Board's website at <http://www.pharmacy.ca.gov/enforcement/precedential.shtml>.

For additional information, contact:

Debbie Damoth,  
Administration and Regulations Manager  
California State Board of Pharmacy  
1625 N. Market Blvd., Suite N219  
Sacramento, CA 95834  
Telephone: (916) 574-7935  
Fax: (916) 574-7918  
E-mail: [Debbie.Damoth@dca.ca.gov](mailto:Debbie.Damoth@dca.ca.gov)

## SUMMARY OF REGULATORY ACTIONS

### REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2013-0813-01  
BOARD OF EDUCATION  
General Educational Development Test

This rulemaking amends three sections in Title 5 of the California Code of Regulations. The purpose of these changes is to remove any reference to the American Council on Education (ACE) along with the General Educational Development Test (GED Test) that is given by ACE. The regulations are being amended to allow the California Board of Education to approve a different assessment which may be administered to issue a California high school equivalency certificate.

Title 5  
California Code of Regulations  
AMEND: 11530, 11531, 11532  
Filed 09/25/2013  
Effective 01/01/2014  
Agency Contact: Cynthia Olsen (916) 319-0584

File# 2013-0913-01  
BOARD OF EQUALIZATION  
Retailer Reimbursement Retention

This rulemaking action readopts, for an additional 90 days, the emergency regulation which establishes the reimbursement amount which lumber and engineered wood products retailers may retain to compensate them for the costs associated with the collection of the one-percent-of-sales-price assessment imposed on purchasers of these products and collected by retailers.

Title 18  
California Code of Regulations  
ADOPT: 2000  
Filed 09/23/2013  
Effective 09/23/2013  
Agency Contact:  
Richard E. Bennion (916) 445-2130

File# 2013-0910-03  
CALIFORNIA HEALTH BENEFIT EXCHANGE  
2014 Standard Benefit Plan Design

The California Patient Protection and Affordable Care Act established the California Health Benefit Exchange (HBEX). HBEX is responsible for arranging and contracting with health insurance issuers to provide affordable, quality health insurance coverage to qualified individuals and qualified employers through the Exchange. In this emergency regulation, HBEX adopts the 2014 Standard Benefit Plan Designs, which standardizes the way health plans are designed.

Title 10  
California Code of Regulations  
ADOPT: 6458  
Filed 09/19/2013  
Effective 09/19/2013  
Agency Contact: Brandon Ross (916) 323-3471

Rulemaking File Index  
Title 18. Public Revenue  
Sales and Use Tax  
Regulation 2000, *Retailer Reimbursement Retention*

1. [Public Comment From Bill Dombrowski, September 24, 2012](#)
2. [Chief Counsel Matters Memo dated October 12, 2012](#)
3. [Public Comment From Ken Dunham, October 12, 2012](#)
4. [Public Comment From David E. Carlsen, October 18, 2012](#)
5. [Public Comment From David A. Bischel, October 19, 2012](#)
6. [Public Comment From Bill Dombrowski, October 21, 2012](#)
7. [Reporter's Transcript Chief Counsel Matters, October 23, 2012](#)
8. [Draft Minutes, Chief Counsel Matters, October 23, 2012](#)
9. [Assembly Bill No. 1492](#)
10. [Economic and Fiscal Impact Statements, November 27, 2012](#)
11. [Notice to Interested Parties and email, November 14, 2012](#)

The following items are exhibited:

- Notice
  - Text of Regulation 2000
  - Regulation History
  - Email
12. [Statement of Compliance](#)

## VERIFICATION

I, Richard E. Bennion, Regulations Coordinator of the State Board of Equalization, state that the rulemaking file of which the contents as listed in the index is complete, and that the record was initially closed on November 27, 2012. The file was reopened on December 3, 2012 for changes without regulatory effect and document revision requested by OAL and the file was closed on December 3, 2012. The attached copy is complete.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

December 3, 2012

A handwritten signature in black ink, appearing to read "Richard E. Bennion", written over a horizontal line.

Richard E. Bennion  
Regulations Coordinator  
State Board of Equalization



September 24, 2012

The Honorable Jerome Horton  
Board of Equalization  
450 N Street, MIC:72  
Sacramento, CA 95814

**RE: Emergency Regulations – AB 1492 Timber Assessment**

Dear Boardmember Horton:

The California Retailers Association (CRA) writes in regards to the emergency regulations that the Board of Equalization (BOE) will be adopting in the next several weeks relative to the recently enacted timber assessment. It is our hope that the BOE uses their expertise and authority in this area in determining a vendor compensation scheme that is both fair and equitable while recognizing the ongoing costs that retailers will incur in complying with AB 1492.

The California Retailers Association is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, supermarkets, fast food restaurants, chain drug and convenience stores, as well as specialty retailers such as auto, book and home improvement stores. CRA works on behalf of California's retail industry, which currently operates over 164,200 stores with sales in excess of \$571 billion annually and employing 2,776,000 people – nearly one fifth of California's total employment.

AB 1492 is a comprehensive forestry reform package that augments the General Fund the revenue from a lumber products fee assessment to offset timber review costs to the industry. In order to support increased regulatory activities, AB 1492 charges consumers a new 1% assessment on the purchase of lumber products at the point of sale. CRA has historically opposed product-specific point of sale fees because it increases costs and liability for retailers and is an unsustainable model given the hundreds, if not thousands of products that many of our members carry.

CRA worked very closely with the Administration after AB 1492 was introduced in the May Revision to carefully construct language to this bill that made the bill more workable for the retail industry. This included:



- Requiring that the fee be separately stated on the receipt so the consumer can understand the new change.
- Clarifying that the fee is to be collected from the consumer at the point of sale. The original language required the retailer to pay the fee.
- Allowing the BOE to promulgate regulations relative to vendor compensation.

With these amendments, we adopted a neutral position on the measure as it moved through the Legislature. There were many discussions that took place on the issue of whether there should be any vendor allowance provided, whether the allowance would be one-time or ongoing, and what the amount should be. Since consensus could not be reached, all parties agreed to defer these decisions to the BOE, since the Board is already very familiar with the administration of vendor allowances.

The reality for our members is that ongoing costs will be incurred for as long as they continue to sell lumber in the state of California. Effective January 2013, we will begin collecting, reporting, and remitting these fees to the BOE. Our members will also spend a tremendous amount of time and resources reprogramming their systems and testing these changes to our systems. After building the systems, they will interconnect them to all retail locations nationwide while ensuring that the systems have been properly changed. These efforts are by no means one-time. Inventories change on an ongoing basis and we will be subject to audits in the future. In fact, our members review thousands of SKUs on a monthly basis for compliance purposes and they will have to do that to comply with AB 1492. Additionally, vendors commonly reengineer products while maintaining the same SKU. These products may have more wood product and our members will have to figure out if the timber assessment applies. We fully recognize that the first year of implementation will be a trial and error period. The main concern is that there remains a lot of uncertainty around which products must be assessed and given our constantly changing inventories, it seems the uncertainty will inevitably remain moving forward.

Some questions include:

1. What happens if a retailer sells a product for which a fee should have been collected?
2. Does the assessment apply when we inbound inventory or just when items are sold?
3. Is the timber fee included in the tax base subject to retail sales tax?
4. Is the timber fee refundable if merchandise is returned for a refund?
5. How will the timber fee be handled if merchandise is exchanged in a net zero transaction?
6. Is the fee due on sales made in California stores, but shipped to customers outside of the state?
7. Is the fee due on sales made from stores outside of the state but shipped to customers inside California?

8. Is the fee due on a tax exempt sale? (Sales to a registered CA lumber reseller, the federal government, a Native American reservation)

These are important issues that our members need clarity on before the effective date that we are required to collect the timber fee. It is also our hope that the BOE acknowledges the ongoing nature of collecting this fee recognizes these areas of concern.

It is our understanding that the Board plans to move forward with emergency regulations on this matter in the next several weeks. We strongly urge the BOE to conduct an independent cost analysis that factors in all of the costs that we will incur from collecting this fee in making their determination. We would also respectfully request a meeting with you to discuss this matter further and to answer any questions you may have. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Dombrowski". The signature is fluid and cursive, with a large initial "B" and a stylized "Dombrowski".


BILL DOMBROWSKI  
President & CEO  
California Retailers Association

cc: The Honorable Betty Yee  
The Honorable Michelle Steel  
The Honorable George Runner  
The Honorable John Chiang

## Memorandum

**To:** Honorable Jerome E. Horton, Chairman  
Honorable Michelle Steel, Vice Chair  
Honorable Betty T. Yee, First District  
Senator George Runner, Second District  
Honorable John Chiang, State Controller

**Date:** October 12, 2012

**From:** Randy Ferris   
Chief Counsel

**Subject:** **Board Meeting, October 23-25, 2012**  
**Chief Counsel Matters – Item J – Rulemaking**  
**Adoption of Emergency Regulation – Lumber Products Assessment**

We request your approval and adoption of attached emergency Regulation 2000, *Retailer Reimbursement Retention*, related to the new Lumber Products Assessment. Staff recommends the new regulation be codified in title 18 of the California Code of Regulations, division 2 State Board of Equalization – Business Taxes, new chapter 4.1, Lumber Products Assessment.

Assembly Bill (AB) 1492 (Chapter 289, statutes 2012) imposes, beginning January 1, 2013, a one-percent assessment on purchasers of lumber products and engineered wood products to be collected by the retailer at the time of sale. As enacted by AB 1492, Public Resources Code (PRC) section 4629.5, subdivision (a)(3) authorizes the Board of Equalization to adopt emergency regulations pursuant to Government Code section 11346.1 to determine the amount of reimbursement retailers may retain related to certain compliance costs associated with the commencement of their collection duties on January 1, 2013. Specifically, PRC section 4629.5, subdivision (a)(3), in relevant part, provides:

The retailer shall collect the assessment from the person [i.e., purchaser] at the time of sale, and may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to regulations, for any costs associated with the collection of the assessment, to be taken on the first return or next consecutive returns until the entire reimbursement amount is retained.

As to legislative history, both the pertinent Senate and Assembly floor analyses refer to retailers being reimbursed for “costs to set up collection systems.”

Thus, both the plain language of PRC section 4629.5, subdivision (a)(3) and the available information regarding legislative intent, support an interpretation that AB 1492 provides for affected retailers to retain a one-time amount, as specifically determined by the Board, for reimbursement of costs to set up collection systems prior to January 1, 2013. The retention of the Board-specified reimbursement amount to cover initial startup costs must be reflected on the first returns due after the Lumber Products Assessment becomes operative on January 1, 2013. If the entire specified amount is not retained on the first return due after January 1, 2013, the remainder must be retained on the next consecutive returns until the entire specified amount is retained.

It is particularly noteworthy that the Board was given authority to determine the amount of reimbursement affected retailers may retain. The Board was not given the authority to define the costs associated with compliance so that each affected retailer could come up with its own unique reimbursement amount. Moreover, the reimbursement amount determined by the Board may be retained by affected retailers without any requirement that the retailers substantiate their costs. In short, nothing in the plain language of PRC section 4629.5, subdivision (a)(3) or the public legislative history demonstrates that the intent of AB 1492 was to enable affected retailers to be reimbursed for actual costs or for costs on an ongoing basis (i.e., costs beyond initial set-up costs as determined by the Board). Further legislative action would be required to provide for reimbursement of actual costs or for ongoing costs of compliance.

The attached proposed regulation provides that retailers, as of January 1, 2013, may retain collected assessment amounts of \$250 per location as reimbursement for one-time, startup costs associated with the collection of the assessment (i.e., for the costs to set up collection systems). The \$250 reimbursement amount reflects an average cost using U.S. Census Bureau data and a 2006 PricewaterhouseCoopers LLP report (Report).<sup>1</sup> The Report was commissioned by a public-private partnership known as the Joint Cost of Collection Study and analyzes a large-scale survey that was conducted to develop the first national measure of sales tax compliance costs. The Report shows that, in 2003 (a time during which many retailers had compliance costs associated with rate and base changes under the Streamlined Sales and Use Tax Agreement), gross retail sales tax compliance costs for programming and servicing cash registers were reflected by a weighted average cost of 0.01 percent of taxable sales.<sup>2</sup> The \$250 amount was calculated by multiplying 0.01 percent by \$2,500,000.<sup>3</sup> The \$2,500,000 figure was chosen because about 50 percent of lumber retail establishments in 2007 had sales of \$2,500,000 or less. Staff believes this data provides an objective foundation for determining that a reimbursement of \$250 per location reasonably estimates the average startup costs for retail lumber establishments that must start collecting the assessment on January 1, 2013 (i.e., the costs to set up collection systems).

While not directly relevant, as additional comparison, staff looked at the reimbursement amounts retained by retailers under the Covered Electronic Waste Recycling Fee Law and the

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<sup>1</sup> *Retail Sales Tax Compliance Costs: A National Estimate, Volume One: Main Report*, PricewaterhouseCoopers LLP, Prepared for Joint Cost of Collection Study, National Economic Consulting, April 7, 2006. (<[http://www.streamlinedsalestax.org/uploads/downloads/JCCS\\_Part\\_I\\_Final\\_Report\\_Vol\\_I\\_20060407.pdf](http://www.streamlinedsalestax.org/uploads/downloads/JCCS_Part_I_Final_Report_Vol_I_20060407.pdf)>)

<sup>2</sup> See footnote 1, Report, Table V.B.1b ("Gross Compliance Costs by Type and Size of Annual Retail Sales, 2003 [As a percentage of total taxable sales]"), at p. 13.

<sup>3</sup> 2007 *Economic Census, Retail Trade*, U.S. Census Bureau.

California Tire Fee Law (under those programs retailers are allowed to retain 3 percent and 1.5 percent of the fee, respectively, as reimbursement of collection costs). (See PRC, §§ 42464, subd. (c)(1), 42885, (b)(3).) We note that, in contrast to the Lumber Products Assessment program under present consideration, these programs illustrate the kind of language the Legislature uses when it intends to provide for ongoing vendor compensation. Staff has determined that, for the e-waste and tire fees, the average annual reimbursement was \$244 per feepayer in fiscal year 2010-11 (total reimbursement amount retained by feepayers divided by the number of feepayers). While compliance costs for these programs are reimbursed per retailer (not per location) and on an ongoing basis (not a one-time, startup basis), we note that average reimbursement amounts for these programs are generally consistent with, and could potentially be viewed as providing additional support for, the proposed \$250 reimbursement amount for the Lumber Products Assessment program.

Emergency regulations approved by the Office of Administrative Law (OAL) are effective on the date they are initially filed with OAL, and approved emergency regulations remain effective for 180 days unless OAL approves a re-adoption of the emergency regulation during that time period. OAL may approve two re-adoptions of the same emergency regulation and each re-adoption may extend the emergency regulation's effective period for up to 90 days. Emergency regulations are repealed when their effective periods expire. However, an emergency regulation can become permanent if the Board re-adopts the regulation through the regular rulemaking process during the period the emergency regulation is in effect. Therefore, staff recommends the Board begin regular rulemaking by authorizing staff to also publish Regulation 2000 in accordance with the regular rulemaking process so that the Board can subsequently adopt Regulation 2000 as a permanent regulation after the normal notice and comment period. Comments from interested parties would be heard and considered when the public hearing for the regulation is held.

Staff recommends that the Board approve and adopt the proposed emergency regulation at the October Board meeting to ensure that a Board-determined reimbursement amount will be duly authorized before the affected retailers' collection duties begin on January 1, 2013. In the event that future public comment or substantiating documentation from affected retailers provide a persuasive basis for reconsideration of the one-time reimbursement amount determined by the Board, such reconsideration is allowed pursuant to the regular rulemaking process staff is also recommending that the Board initiate. The Board also has the authority to amend any emergency regulation it may promulgate. (Gov. Code, § 11346.1.)

If you have any questions, please feel free to contact me.

**STATE BOARD OF EQUALIZATION**

BOARD APPROVED

At the October 23, 2012 Board Meeting

Joann Richmond  
Joann Richmond, Chief  
and Proceedings Division

Approved:

Cynthia Bridges  
Cynthia Bridges  
Executive Director

RF:kbs:yg

Attachment:

Regulation 2000, *Retailer Reimbursement Retention*

cc: Ms. Cynthia Bridges MIC:73  
Mr. Robert Tucker MIC:82  
Mr. Kevin Smith MIC:82  
Mr. Robert Ingenito MIC:67  
Mr. Bill Benson MIC:67  
Mr. Joe Fitz MIC:67  
Mr. Jeffrey McGuire MIC:43  
Ms. Susanne Buehler MIC:92

Regulation 2000, Retailer Reimbursement Retention

Public Resources Code section 4629.5, as added by Statutes 2012, chapter 289, requires the Board of Equalization to adopt a regulation to determine the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by Public Resources Code section 4629.5.

A retailer required to collect the Lumber Products Assessment may retain \$250 per location as reimbursement for startup costs associated with the collection of the assessment. Such reimbursement is to be taken on the retailer's first return on which the Lumber Products Assessment is reported or, if the amount of the collected assessment is less than the allowed reimbursement, on the retailer's next consecutive returns until the allowed reimbursement amount is retained.

"Location" means and is limited to a business location registered under the retailer's seller's permit as of January 1, 2013, where sales of products subject to the assessment are made.

Note: Authority cited: Section 4629.5, Public Resources Code. Reference: Section 4629.5, Public Resources Code.

# **WEST COAST LUMBER & BUILDING MATERIAL ASSOCIATION**

177 Parkshore Drive • Folsom, California 95630 Telephone 916/235-7490 Fax 916/235/7496  
www.lumberassociation.org

October 12, 2012

The Honorable John Chiang, State Controller  
California State Board of Equalization  
PO Box 942850  
Sacramento, CA 95450

**Re: AB 1492**

Dear Commissioner Chiang:

AB 1492 is now law. It was one of the last bills passed prior to adjournment and with the legislature using what is widely considered less than good judgment and logic to deal with a very real issue for the timber producers of California. It is unfortunate the bill passed but now this retail segment of the lumber industry must deal with it.

The legislation contains a provision for reimbursement to lumber retailers for their costs in setting up the collection system. The law also requires that this additional one per cent lumber tax be reported separately on invoices. Further, the list of wood products covered under the law, as defined by the Board of Forestry and Fire Protection, is subject to change and interpretation as consideration is given to the variety and composition of such products. The Board of Forestry recognizes the list of products subject to the tax is open to interpretation and their emergency regulations reflect a potential need to modify the list.

That is not a simple process for the lumber dealers who utilize a computer software program to determine sales taxes and now this additional tax. It is costly, time-consuming and subject to adjustment as the list of products change.

The West Coast Lumber & Building Material Association, an industry trade organization representing the majority of the 300 plus independent lumber yards in the state, recently surveyed the membership on estimated costs to implement the additional tax.

**The average cost for implementation from the respondents (42 separate locations reporting, some with multiple locations) was \$4,521 per location. Additionally, estimates of \$1,500 annually for updates and changes were also reported by respondents.** It should be noted these responses are only those from lumber retailers who believe they have the computer software systems capable of making the modifications.



An additional group of lumber retailers have significantly and extraordinary larger costs in that they may have an older software systems that cannot be modified to handle the changes. Some have custom systems developed in-house for very specific purposes and cannot be modified, and there are even a few businesses who do not use computers for this purpose. Those with the older and custom systems will have very significant additional costs in implementing this additional tax collection. The cost estimates for new systems capable of handling this new tax range from \$100,000 to \$250,000.

We request that the regulations being promulgated by the Board of Equalization contain retailer reimbursement of a minimum of \$4,500 per business location and \$1,500 annually to handle updates and changes for those businesses' computer systems capable of implementing the additional tax.

We additionally request that those businesses whose current computer systems cannot be updated to implement the additional tax be reimbursed as a level sufficient to recover the cost of replacement computer systems.

The time frame for implementing this additional tax is also a concern. Lumber dealers, as well as the several computer software providers who generally serve this industry, indicate that meeting a January 1, 2013, date for implementation is difficult, if not impossible to meet.

The retail lumber industry in California has been in difficult economic conditions for the past six years, with more than 60 retail lumber operations going out of business in that time, and many of the remainder doing business at about 75% of the volume they did six years ago. Those who are still in business will likely survive although it will be many years, if ever, for most to regain what was lost in this recession. This is one more challenge to doing business in the state of California, this time an additional burden to one of the oldest and most vital industries in the state.

We are available to provide additional information as necessary.

Sincerely,



KEN DUNHAM

Executive Director

AN ASSOCIATION OF INDEPENDENT LUMBER DEALERS AND BUILDING MATERIAL SUPPLIERS  
*Affiliated with the National Lumber and Building Materials Dealers Association*



1019 ROUTE 519 • EIGHTY FOUR, PENNSYLVANIA 15330-2813  
PHONE: (724) 228-8820

RECEIVED

OCT 23 2012

Board Proceedings

October 18, 2012

State Board of Equalization  
450 N. Street, Sacramento, California  
PO Box 942879  
Sacramento, California 94279-0080

Attention: Ms. Joann Richmond, Chief, Board Proceedings Division

Reference: Board Meeting October 23, 2012 – Public Comments  
Chief Counsel Matters – Item J – Rulemaking  
Adoption of Emergency Regulation 2000 – Lumber Products Assessment  
Adoption of Retailer Reimbursement Retention – \$250.00 per Location

We would like to present the following public comments regarding this new Lumber Products Assessment and the related Retailer Reimbursement Retention amount of \$250.00 per location. This fee is proposed as a one time start up cost regarding costs associated with collection of this new Lumber Products Assessment.

We had our IT department prepare a preliminary analysis of what it might cost to make changes to our POS system to implement the collection of this new Lumber Products Assessment. The cost of programming development of a system is not dependent on the number of locations. These costs should be considered in addition to an implementation fee that would be associated with the retailer locations registered and located in California.

This change is completely new development affecting the following areas of our reporting system (Requiring new programming)

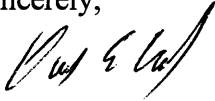
- Inventory ( Product Assignment)
- Estimating
- Deposits
- Commercial Sales
- Job Accounting
- Sales reporting
- Tax Exempt reporting
- Corporate back end processing
- Invoicing changes to comply

These new programming changes are a direct result of having to report and track this New Lumber Assessment separate and distinct from sales and use tax reporting requirements. This tracking will require file conversions within all of the systems listed above. The development time is directly related to the tax being a first of its kind at the SKU level.

We want to point out that a very conservative estimate as to the cost we will incur to implement this new assessment for our California locations would be approximately \$21,000.00. The final amount will be dependent on what the final regulation tells us as to what will be taxable for this New Lumber Assessment.

We trust this information will be considered in final passage of this new Regulation as to what business should be reimbursed for this additional burden put on the business community. This new regulation may impact business owners who currently operate in the State of California and new business who may want to operate a business in the future in the State of California.

Sincerely,

A handwritten signature in black ink, appearing to read "David E. Carlsen", written in a cursive style.

David E. Carlsen  
Vice President Tax  
84 Lumber Company  
Cc: File, Ken Warner, Paul Lentz



## CALIFORNIA FORESTRY ASSOCIATION

PHONE 916.444.6592 • FAX 916.444.0170 • E-MAIL cfa@cwo.com • www.foresthealth.org

1215 K STREET • SUITE 1830 • SACRAMENTO, CA 95814

October 19, 2012

Honorable Jerome E. Horton, Chairman  
Honorable Michelle Steel, Vice Chair  
Honorable Betty T. Yee, 1<sup>st</sup> District  
Senator George Runner, 2<sup>nd</sup> District  
Honorable John Chiang, State Controller

California State Board of Equalization  
450 N Street  
Sacramento, CA 95814

*Re: Support for Staff Recommendation on Lumber Products Assessment*

Dear Chairman Horton and Board Members:

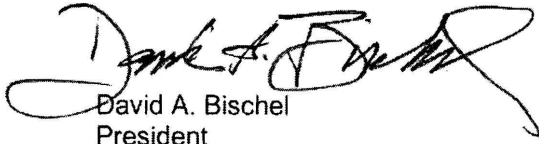
On behalf of the California Forestry Association, I write to urge your adoption of the staff recommendation for the emergency regulations to implement AB 1492, the forestry reform package, including the 1% assessment on the purchase of lumber products in this state. This is in the State Board of Equalization (SBE) Board Meeting agenda for October 23 under Chief Counsel Matters – Item J – Rulemaking – Adoption of Emergency Regulation – Lumber Products Assessment.

CFA was a key sponsor of AB 1492, working closely with the Legislature and the administration, and we believe that the staff's recommendation reflects the legislative intent regarding retailer compensation. Therefore, we urge you to approve and adopt proposed Regulation 2000, Retailer Reimbursement Retention for implementation of the Lumber Products Assessment. AB 1492 provides the SBE with the authority to adopt an emergency regulation to determine the amount of reimbursement retailers may retain for their compliance costs for collecting the fee beginning January 1, 2013. We concur with the staff's analysis that the legislative intent and history was to allow only a one-time amount to cover initial costs of compliance, which the Legislature had been informed would be no more than \$250 per retail establishment.

As you may be aware, in instances wherein retailers receive ongoing compensation for collection of a fee, the underlying statutes clearly specify an amount and that they are ongoing reimbursements to the retailer. No such provisions exist in AB 1492. Therefore, there is no authority to provide retailers with reimbursement of actual or ongoing costs of compliance.

Thank you for your consideration. If you have any questions, please feel free to contact me.

Sincerely,



David A. Bischel  
President



October 21, 2012

The Honorable Jerome Horton  
Board of Equalization, Chairman  
450 N Street, MIC:72  
Sacramento, CA 95814

RE: Emergency Regulation 200 – AB 1492 Lumber Assessment

Dear Chairman Horton:

Thank you for the opportunity to provide feedback and comments on the Board's proposed emergency regulation 2000 relating to retailer reimbursement retention as allowed under the recently enacted Lumber Products Assessment. CRA would like to acknowledge the work that all involved stakeholders have put into this effort thus far. However, we remain concerned with the proposed level of retailer reimbursement and do not believe that the proposed reimbursement amount would adequately account for the true costs that our members will incur as a direct result of complying with this new law.

The California Retailers Association is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, fast food restaurants, convenience stores, supermarkets and grocery stores, chain drug, and specialty retail such as auto, vision, jewelry, hardware and home stores. CRA works on behalf of California's retail industry, which currently operates over 164,200 stores with sales in excess of \$571 billion annually and employing 2,776,000 people—nearly one fifth of California's total employment. The retail industry in California represents one in every four jobs in the State, a total of nearly 5 million jobs (2009), and accounts for 17.8% of the State's GDP.

As you know, effective January 1, 2013, retailers will be required to collect a one-percent assessment on the purchase of lumber products from consumers at the point of sale. In order to do this, our members will have to carry out an exhaustive effort in the next two months reconfiguring their computer systems, taking inventory of what they sell, making a determination among thousands of products on whether the product is subject to the assessment, testing the system for accuracy, among a host of other things in order to be fully compliant by January 1, 2013. It is also key to mention that this exhaustive administrative effort will overlap with the busiest time of year for retailers with the holiday season nearing.

Additionally, AB 1492 (Chapter 289, Statutes of 2012) provides that retailers “may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to regulations, for any costs associated with the collection of the assessment...” However, despite feedback from impacted companies, emergency regulation 2000 will only allow retailers to retain \$250 per location to reimburse them for costs associated with the collection of the assessment. While we appreciate the acknowledgement that retailers WILL incur costs for collection and remittance of the assessment, we believe that the figure proposed shortchanges our members by significantly limiting cost recovery. Nothing in AB 1492 specifies that reimbursement was intended to be paid on a one-time basis, nor does it propose to reimburse retailers on a per-location basis. However, the proposed regulation has been formulated based upon interpretations that this was the intent of AB 1492.

The BOE memorandum dated October 12, 2012 provides that there is support for an interpretation that AB 1492 provides for affected retailers to retain a one-time amount for the reimbursement of costs to set up new collection systems. We would respectfully disagree as the language as provided above simply states that we may retain “an amount equal to the amount of reimbursement.” Also noted in the memorandum was a recent study of sales tax collection costs. This study analyzed the costs associated with sales tax compliance and found that \$250 reflects an average cost for programming and servicing cash registers. Using this as a foundation for determining reimbursement for the lumber products assessment raises the important question of whether or not setting up a tax collection system for lumber products would be the same as the general cost of administration of a sales tax. We would argue that comparing the two would be like comparing apples to oranges given that select (lumber product) SKUs will have to be programmed into the system as opposed to sales tax which applies to most products universally.

Also cited in the memorandum were examples of retailer reimbursement for the California Tire Fee Law and the Covered Electronics Waste Recycling Fee Law, where retailers receive reimbursement in the amounts of 1.5 percent and 3 percent respectively. It was further noted that these programs explicitly provided guidance that reimbursement will be provided on an ongoing basis and that AB 1492 did not provide such specificity. However, again, nothing in AB 1492 limited cost recovery in the manner that we see in emergency regulation 2000. We would also argue that given the E-Waste Law and the Tire Fee Law, there is established precedent for this type of reimbursement in California Law. What the Board is prepared to adopt at the October 23<sup>rd</sup> hearing runs counter to precedent and is very disappointing.

We are, however, heartened by the possibility, as expressed on page 3 of the BOE memorandum, that there may be a future opportunity to substantiate through documentation from retailers what costs we have incurred through our efforts to comply with AB 1492. We would appreciate and look forward to the opportunity to work with the BOE to look into that issue in the near future.

We thank you for the opportunity to provide comment on this important issue. If you have any questions, please feel free to call me at (916) 443-1975.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Dombrowski". The signature is fluid and cursive, with a large initial "B" and a stylized "Dombrowski".

BILL DOMBROWSKI  
President & CEO  
California Retailers Association

Cc: The Honorable Betty Yee  
The Honorable Michelle Steel  
The Honorable George Runner  
The Honorable John Chiang

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION  
5901 GREEN VALLEY CIRCLE  
CULVER CITY, CALIFORNIA

REPORTER'S TRANSCRIPT

OCTOBER 23, 2012

CHIEF COUNSEL MATTERS

ITEM J RULEMAKING

ITEM J1 Adoption of Emergency Regulations -  
Lumber Products Assessment

Reported by: Juli Price Jackson

No. CSR 5214



## P R E S E N T

For the Board  
of Equalization:

Jerome E. Horton  
Chairman

Michelle Steel  
Vice-Chairwoman

Betty T. Yee  
Member

George Runner  
Member

Marcy Jo Mandel  
Appearing for John  
Chiang, State  
Controller (per  
Government Code  
Section 7.9)

Joann Richmond  
Chief, Board  
Proceedings Division

For staff:

Liz Houser  
Deputy Director  
Administration

Robert Tucker  
Assistant Chief  
Counsel

Bill Benson  
Acting Chief  
Research and  
Statistics Section

---oOo---

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6	Ken Dunham West Coast Lumber and Building Materials Association	18
8	Craig Evans Learned Lumber	23
9	David Bischel Department of Forestry	24

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5901 GREEN VALLEY CIRCLE  
CULVER CITY, CALIFORNIA  
OCTOBER 23, 2012

---oOo---

MR. HORTON: Ms. Richmond.

MS. RICHMOND: Our next item are the Chief  
Counsel Matters, item J, rulemaking, J1, Adoption of  
Emergency Regulations - Lumber Products Assessment.

We do have speakers.

MR. HORTON: Okay. Members, Mr. Tucker is here  
and would like to introduce the issues in this case.

Prior to doing so -- let's see how many chairs  
we have here. We have one, two, three, four individuals  
who would like to testify. I'd ask that they come  
forward and take a seat. We'll take their testimony  
subsequent to the introduction of the issues.

Mr. Ken Dunham, the Executive Director of West  
Coast Lumber Building Materials Association; Mr. Craig  
Evans, Vice President of the Learn Lumber; Mr. Mandy  
Lee, Director, Government Affairs for the California  
Retailers' Association and -- strike that name, my  
apologies. Mr. David Bischel, President of --

MR. BISCHEL: Bischel.

MR. HORTON: -- pardon?

MR. BISCHEL: Bischel.

MR. HORTON: Bischel, okay, President of the  
California Forestry Association; and Gerry --

MR. CHARRON: Charron.

1 MR. HORTON: -- Charron.

2 MR. CHARRON: Charron.

3 MR. HORTON: Charron?

4 MR. CHARRON: Yes. Software Development  
5 Manager for Stock Building Supply.

6 MR. HORTON: Oh, there you go, okay.

7 Just for consistency and maybe a little  
8 balance, I'm going to ask that Mr. -- yes, please. You  
9 can squeeze in there somewhere.

10 Okay, Mr. Tucker, since you are outnumbered,  
11 I'm going to ask a few of -- other people to come up --  
12 just kidding. A little levity at 3 o'clock.

13 Okay, Mr. Tucker.

14 MR. TUCKER: Robert Tucker from the Legal  
15 Department. With me are Steve Smith and for -- also  
16 from the Legal Department, and Mr. Bill Benson from  
17 Research and Statistics.

18 Staff requests approval and adoption of  
19 Emergency Regulation 2000, retailer reimbursement  
20 retention.

21 Assembly Bill 1492 provides for -- beginning on  
22 January 1st, 2013 -- a 1 percent assessment on  
23 purchasers of lumber engineered wood products. The  
24 statute also authorizes the Board to adopt emergency  
25 regulations to determine the reimbursement for  
26 retailers.

27 The plain language of the Public Resources  
28 Code, Section 4629.5, supports staff's interpretation

1 that this authorizes a one-time, Board-determined amount  
2 of reimbursement. It's our position that the provision  
3 for ongoing reimbursement is not provided for in this  
4 section and would require legislation in order to make  
5 it so.

6 Further, it's staff position that the Board was  
7 not given the authority to define cost, but rather was  
8 given the authority to set the amount of reimbursement.

9 The Board's economists, after reviewing  
10 available information, determined that a reimbursement  
11 of \$250 is appropriate. Staff recommends that this \$250  
12 per location is a reasonable estimate of the average  
13 startup cost for such retail lumber establishments.

14 The Board, if it approves and adopts this  
15 regulation, the next step would be to promulgate a  
16 permanent regulation. And that the Business Taxes Group  
17 is ready to do so at the Board's direction.

18 Mr. Smith has just some questions that were  
19 posed in a submission and he's ready to respond to  
20 those.

21 MR. SMITH: Prior to the hearing we received a  
22 written submission from the California Retailers'  
23 Association and it included eight questions of --  
24 they're really not specifically to this regulation, but  
25 general administrative matters.

26 And we responded to those questions in writing.  
27 And we will be updating the Board's frequently asked  
28 questions website to include answers to those questions,

1 as well as others.

2 But if it's the Board wish, I could go over  
3 those answers here.

4 MR. HORTON: For the record, please.

5 MR. SMITH: There is a question posed about if  
6 a retailer sells a product for which the lumber  
7 assessment should have been collected, what happens?

8 And what happens is they are responsible for  
9 reporting and remitting the assessment.

10 Secondly, does the assessment apply when  
11 inventory is inbounded or just when inventory is sold?

12 And the assessment applies only once, when the  
13 inventory is sold.

14 Third, is the lumber product assessment  
15 included in the measure of tax for retail -- for sales  
16 tax?

17 And it's not included in the measure of sales  
18 tax.

19 Fourth, is the lumber product assessment  
20 refundable if the merchandise is returned for refund?

21 And the assessment is refundable with the --  
22 when the gross receipts are refunded.

23 How -- fifth, how will the lumber products  
24 assessment be handled if merchandise is exchanged in a  
25 net zero transaction?

26 Because of the refund and the net sale, they'd  
27 cancel each other out. And there'd be no additional  
28 assessment due.

1 Sixth, is the lumber product assessment due on  
2 sales made in California stores but shipped to customers  
3 outside the state?

4 The assessment would not be due then because  
5 the assessment's on the use by the purchaser and if that  
6 occurs outside of California, it wouldn't be subject to  
7 California assessment.

8 Seven, is the lumber products assessment due on  
9 sales made from stores outside of the state, but shipped  
10 to customers inside California?

11 In this case the assessment is due if the  
12 retailer is engaged in business in California, they  
13 would owe the tax. But if they're not engaged in  
14 business in California, we would have to collect it from  
15 the purchaser.

16 And, eight, is the lumber products assessment  
17 due on tax exempt sales, such as sales to registered  
18 California lumber resellers, sales to the U. S.  
19 government, sales delivered to a Native American  
20 customer on reservation lands?

21 For sales for resale, the assessment wouldn't  
22 be due because the purchaser isn't using it. For exempt  
23 sales in interstate commerce, the assessment would also  
24 not be due because it wouldn't be used in California.  
25 For sales to the U. S. government, it would be exempt  
26 because of sovereign immunity. And, so, the assessment  
27 wouldn't be due. And similarly for sales to Native  
28 Americans on reservation land, similar to

1 Regulation 1616, the assessment might not be due. But  
2 there is no general sales use tax that would exempt  
3 people from the assessment.

4 So, aside from those examples that I cited, we  
5 believe that the assessment would be due.

6 MR. HORTON: Any further testimony on the part  
7 of the Department?

8 I understand West Coast Lumber Building  
9 Material also posed some questions in advance?

10 MR. SMITH: They posed concerns.

11 MR. HORTON: Concerns? You view those as  
12 concerns?

13 Okay, we'll move forward. I will now take the  
14 testimony of our witnesses today. We'll start from  
15 my -- yes?

16 MS. YEE: Can we hear from one more staff  
17 before we go to them?

18 MR. HORTON: Sure.

19 MS. YEE: Mr. Benson's here and I just wanted  
20 to get some --

21 MR. BENSON: Could you -- I have an inner ear  
22 infection and I can hardly hear. And that's one reason  
23 why you heard me talking so loud. I can't hear myself  
24 talk either.

25 MR. HORTON: All right.

26 MR. BENSON: So, if you could speak louder,  
27 then I can answer your questions.

28 MS. YEE: I thought before we have the public



1 testimony, if you could comment on the reasonableness of  
2 the \$250 figure.

3 I think you did some work in that regard?

4 MR. BENSON: Yeah, we -- we based the \$250  
5 on -- on -- on two different items. There was a study  
6 that was performed by Price Waterhouse in 2006 and this  
7 related to streamlined taxable sales. And what they  
8 looked at is all costs associated with any kind of rate  
9 change or base -- base -- either rate change or base  
10 change in the -- in the sales tax system across the  
11 board for all states.

12 And, we -- we looked at, specifically, the --  
13 the cost of programming and -- and reprogramming and  
14 also setting up the registers.

15 And this study indicated overall -- for all  
16 companies, not just small or medium or large -- but the  
17 weighted average for all companies was .01 percent.

18 Joe also looked at -- Joe Fitz, our economist,  
19 he also looked at -- to come up with this estimate -- uh  
20 -- the median amount -- median amount of -- of taxable  
21 sales for building and material supply companies is \$2.5  
22 million. And, so, we applied that 2.5 million to the  
23 .01 percent and came up with \$250.

24 And that's how -- that's how we came up with  
25 the 250.

26 Further in the study it -- it -- it talked  
27 about either rate changes or base -- base changes. And  
28 combined, it's about \$244.

1           So, when we looked at the 250, we thought that  
2   that was a reasonable amount based on the limited of  
3   time -- the limited amount of time that we had to come  
4   up with this amount.

5           If we have further time, you know, to further  
6   do our due diligence, contact industry, we could come up  
7   with a different amount. But I -- I don't think that  
8   whatever amount that we do come up with -- it's not  
9   going to fully reimburse any retailer.

10          The amounts that we've seen is -- are all over  
11   the place. Home Depot said it would cost them a million  
12   dollars. 84 Lumber said would be \$21,000 per location.  
13   Some -- some other information shows that \$4500 startup  
14   costs, \$1500 ongoing costs.

15          The problem that we have with -- with having a  
16   reimbursement so high with, you know, somewhere between  
17   10 and 25, 30,000 retailers -- we believe that number is  
18   more solidly at 10 -- is that you run into the problem  
19   where the reimbursement will exceed the actual revenues  
20   that the -- that the program is proposed to bring in.

21          There is a \$35 million estimate that we have  
22   out there in terms of how much this 1 percent lumber  
23   assessment fee would bring in. We've got the  
24   reimbursement that will offset that. Our reimbursement  
25   is at 2.5 million. We've got also State costs, State  
26   administrative costs, that's probably around another 2.5  
27   million. So, that's \$30 million in terms of the target  
28   that they were also looking at.

1           And, so, again, we thought that the amount, the  
2   250, though -- I am -- I'm -- I'm sure it's not going to  
3   cover all of their costs associated with this, but it is  
4   certainly -- it should certainly help in terms of -- of  
5   covering costs in reprogramming registers and -- and  
6   thus. And, so, that's why we -- we used that -- we came  
7   up with the 250.

8           The Board can decide to -- that the amount is  
9   too low. They can decide -- you all can decide to go  
10   higher. You know, it's -- it all depends on what you  
11   would like to do.

12           We have other programs, specifically the  
13   E-Waste program, as well as the -- the -- the tire  
14   recycle fee. They have a continuous reimbursement.  
15   Tire recycle, I believe, is 3 percent of taxable sales.  
16   At 3 percent of taxable sales, let's say, if we went  
17   that -- that route at 35 million doll -- \$35 million  
18   that we're bringing in, that amounts to about a million  
19   dollars a year.

20           And, so, in -- and with that, that 250 -- in  
21   order to get to the 250, let's say if we had a 3 percent  
22   reimbursement for their taxables, for their -- for their  
23   receipts, it would take about two and a half years then  
24   to recover that -- that entire \$250.

25           So, just to kind of give you some kind of  
26   perspective of what the 250 means with respect to a --  
27   a fixed 3 percent rate or 1 percent rate or any kind of  
28   continuous reimbursement that you'd like to have. That

1 may take a legislative remedy, I'm not really sure.

2 MR. RUNNER: Okay. Mr. --

3 MR. RUNNER: Can we -- again, just in terms of  
4 operational here, if we have questions in regards to the  
5 way the chart -- or the assumptions in the chart, do you  
6 want -- can we have that discussion now, before we get  
7 into the specific issue testimony? Or just to kind of  
8 clarify the --

9 MR. HORTON: Let's take the -- Members, let's  
10 take the general testimony.

11 MR. RUNNER: Okay.

12 MR. HORTON: And then through the Q and A  
13 process, we can -- we can try to drill down on the  
14 specific concerns.

15 MR. RUNNER: Okay.

16 MR. HORTON: And, so, I'm now going to go to  
17 Miss Lee with -- the Director of Government Affairs for  
18 the California Retailers.

19 ---oOo---

20 MANDY LEE

21 ---oOo---

22 MS. LEE: Good afternoon, Chairman and Members,  
23 thank you for the opportunity to provide a brief comment  
24 today.

25 My name is Mandy Lee. I'm the Director of  
26 Government Affairs for California Retailers'  
27 Association. We have members that are impacted  
28 retailers under AB 1492 and emergency Regulation 2000.

1           That said, we appreciate the work  
2 wholeheartedly that everyone's put into this -- the BOE  
3 staff, the Board Members that have in the time. We've  
4 had several conversations, as well as the  
5 administration.

6           However, our position on emergency Regulation  
7 2000 is well documented in the public record. At the  
8 risk of restating what is already known, I would like to  
9 briefly reiterate that for the record. We are concerned  
10 with the limitations in cost recovery that are proposed  
11 in emergency Regulation 2000. We are encouraged,  
12 however, that emergency Regulation 2000 does, indeed,  
13 acknowledge that impacted retailers will incur costs, as  
14 reflected by a prior BOE analysis on the bill, as well  
15 as reflected in the action that Board Members are  
16 preparing to take today with adopting emergency  
17 Regulation 2000.

18           However, we believe that these costs that are  
19 true costs will far surpass what is being proposed  
20 today. And -- and hearing that it's not the intention  
21 of the Board to fully reimburse us, we would hope that  
22 the Board would try to get as close to reimbursing us to  
23 the extent possible. We recognize there are  
24 sensitivities there.

25           We would appreciate and look forward to and  
26 encourage the opportunity to come back to the Board at  
27 some later date to substantiate the cost. I know that  
28 it was noted in the BOE memo that we were being asked to

1 be reimbursed for costs that we have not yet  
2 substantiated. And that is a point taken. But if --  
3 if -- we would encourage the Board to allow impacted  
4 parties the opportunity to come back to substantiate  
5 those costs.

6 We in no way are asking for this to be a source  
7 of revenue for us. We are being asked by the  
8 legislature, by the State of California, to do  
9 something, to collect a fee, to remit it to the BOE, in  
10 order to carry out the goals of AB 1492 and we're happy  
11 to do that. And we will strive to comply with the law.  
12 But we are asking the Board for the opportunity in the  
13 future to come back and re-visit this issue.

14 So, with that, I thank you so much for the  
15 opportunity.

16 MR. HORTON: Thank you.

17 Mr. Charron, will you please introduce yourself  
18 for the record?

19 And then we'll --

20 MR. CHARRON: Good afternoon.

21 MR. HORTON: -- and then we'll just proceed on  
22 down the line.

23 ---o0o---

24 GERRY CHARRON

25 ---o0o---

26 MR. CHARRON: Okay. Good afternoon, Chairman,  
27 Board.

28 My name is Gerry Charron. I'm the Software

1 Development Manager for Stock Building Supply.

2 The reason I'm here is to express my concerns  
3 about the reimbursement fee for what it'll be costing  
4 our customer -- costing us in order to implement this.

5 MR. HORTON: Not -- not to interrupt you, but I  
6 want to ask Miss Lee to come forward come forward and --  
7 just in case there are additional questions of the  
8 Members.

9 My apologies, sir.

10 MR. CHARRON: No problem.

11 At the current rate of \$250 per location -- we  
12 operate 10 locations within California, which means we'd  
13 be getting reimbursed approximately \$2500.

14 We estimate that the cost to program our  
15 software package, which is highly customizable, it's not  
16 an off the shelf bought software package, is going to  
17 take us approximately 250 hours in order to do design,  
18 documentation, coding, testing and implementation.

19 And we estimate that that would be at  
20 approximately \$200 per hour is what we based our  
21 estimates off. So, our estimated cost for this is  
22 actually going to be about \$50,000 in order to implement  
23 this.

24 We have to modify our database. We have to  
25 modify our screens in order to show these sales. We  
26 have to modify the printed receipts. You have sales  
27 receipts. You have invoices. You have quoting systems.  
28 You have statements. You have everything that goes out

1 to the customer. And then after that we have to modify  
2 reporting, which will then go back to you and everything  
3 else.

4 So, this is not a small project for us, it's a  
5 big project and it's going to cost a lot of money. And  
6 at \$250 per location, just doesn't even come close to  
7 covering it.

8 Thank you.

9 ---o0o---



1 MR. HORTON: Thank you.

2 Sir?

3 ---o0o---

4 KEN DUNHAM

5 ---o0o---

6 MR. DUNHAM: Good afternoon, Ken Dunham. I'm  
7 the Executive Director of the West Coast Lumber and  
8 Building Materials Association.

9 The reason I have to say it that way is we used  
10 to be the Lumber Association of California and Nevada.  
11 We've now expanded.

12 We're a regional lumber industry trade  
13 association headquartered in Folsom, California. We've  
14 been around, in some form or another, since the early  
15 1900s in California and the surrounding area. We have  
16 in excess of 300 member firms -- a majority of whom are  
17 here in California, but we also have members in 18 other  
18 states.

19 Our principal membership category is the  
20 independent lumber retail dealer. We represent about  
21 200 of these locations that represents about 110 to 115  
22 owners. Some have multiple yards.

23 From best we can determine, this is about 85  
24 percent of the lumber dealers in the State of  
25 California. Some do not choose to join. Plus we don't  
26 represent the large chain firms as well.

27 We're here to just strongly oppose this  
28 proposed \$250 reimbursement. As this was coming out, we

1 took it on ourselves to survey our members, asking  
2 them -- without prompting, I might add --

3 "How much is it going to cost you to be  
4 able to implement this? Give us your best  
5 estimate."

6 In some cases people were actually able to  
7 provide us with quotes that they had gotten from their  
8 software providers. The average cost for implementation  
9 reporting from the respondents -- and we had respondents  
10 now from all -- about 65 firms -- was 4,000 -- the  
11 average was \$4,521 per location. That's what we're  
12 requesting, \$4,500.

13 We also know that there's going to be annual  
14 costs as this list ebbs and flows with products added  
15 and subtracted and we can deal with that another time.

16 I think it's also interesting to note that the  
17 \$4500 figure -- while I'm not representing them, I  
18 happen to know that the Home Depot people have said  
19 their costs in California will be a million dollars.  
20 You divide a million dollars by 240 locations, which is  
21 what they have, and it come up to \$4,167. That's --  
22 that's pretty close to the cost that everybody else is  
23 coming up with.

24 As Gerry said, this is not simple. This is not  
25 something that people can do overnight to comply, to get  
26 everything changed that they have to do in their  
27 systems.

28 Additionally, you got a number of businesses

1 who have systems that are either outdated or so custom  
2 made that they're going to have to buy totally new ones.  
3 That's -- that's a -- that's a problem.

4 Your staff counsel's memorandum proposing the  
5 \$250 reimbursement appears to be largely based on this  
6 2006 Price Waterhouse study that used 2003 data. I  
7 don't know if anybody has taken the time to read that.  
8 I have. It's -- it's pretty astounding what -- what's  
9 in that. It's ten-year-old data and riddled with  
10 inaccuracies.

11 The report focuses on updating cash registers.  
12 I could not find any reference in here to updating  
13 computer systems. And I read this darn thing again last  
14 night -- while watching the Giants' game. There is no  
15 mention of computers in here. It's cash registers. You  
16 know, if you want to configure a cash register to handle  
17 a simple increase or decrease in sales tax, that's  
18 probably a pretty accurate cost. But to put that out as  
19 the data for this, I -- I think is a problem.

20 The other part you need to read in there is the  
21 comments that the Price Waterhouse people made about  
22 coverage error, missing data, measurement error,  
23 sampling error. They simply had a very difficult time  
24 even coming up with what they got here.

25 I would very, very much question the statistics  
26 of it. It's inaccurate. It's outdated. And it's  
27 non-germane to what we're trying to talk about here.

28 Staff counsel also bases the recommendation of

1     \$250 based on the calculation of a .01 percent by 200 --  
2     by \$2,500,000. Somehow that that -- 50 percent of the  
3     retail lumber yards in the State -- in the -- in this  
4     country are doing 2 million 500 or less. I can assure  
5     you that is not the case in California here. Our data  
6     shows that less than 15 percent of the lumber dealers in  
7     the State of California do 2.5 million. You have a  
8     number that do in excess of 100 million. And you've got  
9     some that probably approach 200, 250. That's just the  
10    independent dealers. That's -- that's not the large  
11    chain dealers. There aren't any of those that are doing  
12    2.5 million or less at a location.

13           One of your staff commented to me and I -- I --  
14    I heard it again today here of how many people -- that  
15    this maybe will effect 10,000 retailers in the State of  
16    California. Our best estimate of -- is that there is  
17    approximately 800 of what could be considered full  
18    lumber yards in the State of California. That's 300 of  
19    the major chains -- the Home Depots, the Lowes, a couple  
20    of others -- and then about an equal number of  
21    independent dealers in the State. And we'll throw in  
22    that there's maybe some home and garden centers, some  
23    hardware stores that may resell plywood, basic lumber.  
24    There's got to be a few we're missing. But that number  
25    is nowhere near 10,000, it's somewhere, probably,  
26    between 800 and a thousand.

27           Finally, I just want to say a couple of quick  
28    things about what's going on with this lumber industry.

1 This is an industry in crisis. I don't think anybody's  
2 surprised about that.

3 In the past five years, we've had 72  
4 family-owned lumber yards go out of business in this  
5 State. Several of those businesses were in excess of a  
6 hundred years old.

7 This kind of -- the action here today is going  
8 to force some more closures. I've had one business tell  
9 me that -- a multiple yard business -- that they will be  
10 closing two of their yards within the next three months  
11 because they're just so frustrated with the business  
12 attitude in the State of California.

13 Data that I got last week, the average  
14 lumberyard in this country lost \$177,000 in net sales.  
15 That was their net loss in 2011. This State of  
16 California has been even harder -- hit harder than most  
17 states. The average -- those who make a profit average  
18 about 1.9 percent. And I did have another survey last  
19 week that showed it was .93 percent of profit.

20 You know, we're not here to debate the merits  
21 of AB 1492 that's done and gone. We think it was bad  
22 law, bad policy. We're just asking now for fair  
23 treatment for implementation costs as provided for in  
24 the law. And that can figure can be very well justified  
25 at 4500.

26 Thank you very, very much for your time today.

27 MR. HORTON: Thank you very much.

28 ---o0o---

1 MR. HORTON: Sir.

2 ---o0o---

3 CRAIG EVANS

4 ---o0o---

5 MR. EVANS: Chairman Horton, the Board, thank  
6 you for giving us the opportunity to appear today.

7 My name is Craig Evans. I'm with Learned  
8 Lumber in Hermosa Beach, California.

9 I would best describe our situation as impacted  
10 by this. Our current cost to implement the computer  
11 programming needed to be compliant is \$7800. And it  
12 comes at a very inopportune time, at the end of the  
13 year, when we're trying to get all of our other tax  
14 burdens sorted out, get our books closed, proceed with  
15 the holidays, start a new year.

16 We're going to experience a lot of overtime,  
17 additional unaccounted for hours that are not included  
18 in the \$7800 by having people work late and work on this  
19 programming in house, as well as our external vendor  
20 that is going to be supplying us with some of this.

21 I can only ask the Board to consider the amount  
22 that is being offered to reimburse lumber dealers.  
23 Thank you.

24 ---o0o---

1 MR. HORTON: Sir. .

2 ---o0o---

3 DAVID BISCHEL

4 ---o0o---

5 MR. BISCHEL: Mr. Chairman, Members of the  
6 Board, my name is David Bischel, excuse me. And I am  
7 President of the California Forestry Association.

8 The California Forestry Association was a key  
9 sponsor of AB 1492, working closely with the legislature  
10 and the administration. And we believe that the staff's  
11 recommendation reflects the legislative intent regarding  
12 the retailer compensation. Therefore, we urge you to  
13 approve and adopt proposed Regulation 2000.

14 AB 1492 provided the State Board with the  
15 authority to adopt an emergency regulation to determine  
16 the amount of reimbursement. And we believe that -- we  
17 concur with the staff's analysis and the methodology  
18 they used in arriving at the -- at the recommendation to  
19 you today.

20 As, so, we would again like to state that we  
21 support the -- adopting the emergency regulation and  
22 look forward to working with you in the future.

23 MR. HORTON: Thank you very much.

24 Discussion, Members?

25 Member Yee?

26 MS. YEE: I think Mr. Runner was first.

27 MR. HORTON: Oh, Mr. Runner.

28 MR. RUNNER: Thank you. Just real quick couple

1 of questions. Let me start with staff.

2 In regards to the -- to the -- to the \$250, the  
3 study that was done -- see if I understand the study,  
4 'cause I did look at it briefly, I did not read the  
5 whole thing. I appreciate somebody did and you had the  
6 good sense to do it while you're watching a baseball  
7 game.

8 But the issue of that study, it seemed to me  
9 was a -- what would be a law, what would be a broad  
10 reprogramming or recalculation of a cash register -- I  
11 don't know if it includes computers or not -- for an  
12 event that would happen across the board. You're  
13 readjusting, for instance, your sales tax from 8.5  
14 percent to 8 -- to 9 percent.

15 Isn't -- isn't that the core of the study?

16 MR. BENSON: I would say that that would be  
17 true, either that or also extending the tax base to,  
18 let's say, services.

19 MR. RUNNER: Okay, okay. If -- you mean if  
20 you're going to somewhere new and start?

21 MR. BENSON: Pardon me?

22 MR. RUNNER: If you were to go somewhere new  
23 and create a new tax on things or -- well, let me -- I  
24 won't go there. Okay, that's okay.

25 Let me just add -- in regards to that, though,  
26 it seems to me that this requirement's a little  
27 different than that for two reasons. And, therefore, it  
28 seems to me that the ability to figure out the cost,



1 based upon the study, would be kind of erroneous because  
2 two things, No. 1, this is only on a segment of stock --

3 MR. BENSON: That's true.

4 MR. RUNNER: -- it's not across the board.

5 I would assume it would be easier to adjust  
6 prices across the board on everything than having to  
7 come up with a program to pick out certain things.

8 Is -- wouldn't that be a fair observation?

9 MR. BENSON: That would be fair.

10 MR. RUNNER: Okay. And the second thing is  
11 this -- this requires another printed line on the -- on  
12 the receipt.

13 MR. BENSON: Correct.

14 MR. RUNNER: And this study didn't anticipate  
15 another printed line on a receipt, correct?

16 MR. BENSON: Not that I'm aware of, no.

17 MR. RUNNER: Okay. So, I would submit that the  
18 study itself is kind of like an incomplete study and not  
19 necessarily comparable to what this requirement is.

20 Now, let me even go a step farther. In that  
21 study we chose -- when we came up with the \$250 -- we  
22 chose not to include training, correct?

23 MR. BENSON: No, we didn't -- we only -- we  
24 only included programming and servicing of registers and  
25 that's on page 13 --

26 MR. RUNNER: Right, okay.

27 So, if -- if we were to include --

28 MR. BENSON: -- of the report.

1           MR. RUNNER: -- the training aspect, which  
2    would be a cost that the retailers are having to take  
3    on, and we use then the study, the average reimbursement  
4    jumps up to \$1,000 per site.

5           MR. BENSON: It could.

6           MR. RUNNER: Well, it does, in terms of the --  
7    in terms of using the numbers that they -- you know, in  
8    the study.

9           MR. BENSON: Uh-huh.

10          MR. RUNNER: So, anyhow -- so, I guess I'm at a  
11   loss as to how applicable this particular study even is  
12   in this discussion.

13          Now the other issue that I -- that I have a  
14   question about and that is the comment that was made --  
15   and let me go to Legal on this -- the comment was made  
16   is that -- this -- "We know that this is not going to  
17   fully reimburse the retailer."

18          I think that was the comment that was made,  
19   correct?

20          MR. BENSON: Right. I don't think it will,  
21   no.

22          MR. RUNNER: Okay. So, let me go back to the  
23   legislation, because it seems to me the legislation's  
24   pretty clear.

25          And this is on page 8, bottom of the page,  
26   Section -- 4629.5, No. 3, halfway through and it talks  
27   about us.

28          It says,

1           "The retailer shall collect an assessment  
2           from the people -- the person at the time of  
3           sale and may retain an amount equal to the  
4           amount of reimbursement as determined by the  
5           Board of Equalization, pursuant to this  
6           regulation."

7           So, clearly that's our job.

8           And then it says -- then it tells us what our  
9           job is. Our job is to -- "for any cost associated with  
10          the collection of the assessment."

11          Now, that doesn't sound to me like a po -- a  
12          partial reimbursement. In fact, it's pretty -- it seems  
13          to me it's pretty clear. It says, "for any cost  
14          associated."

15          So, I would submit that not only includes all  
16          costs, but even training. Because that's a part of the  
17          cost that the retailer has.

18          So, I guess I'm trying to figure out, are we  
19          actually fulfilling the intent of the legislation by --  
20          by admitting publicly here that this does not fully  
21          reimburse the retailer?

22          Go ahead.

23          MR. TUCKER: Unfortunately, that's the first  
24          I've heard of the admission that this doesn't fully  
25          reimburse the retailer.

26          We --

27          MR. RUNNER: Well, hold it. Let me back up.

28          We know that it doesn't fully reimburse --

1 MR. TUCKER: Correct.

2 MR. RUNNER: -- the retailer because it's an  
3 average.

4 MR. TUCKER: Correct.

5 MR. RUNNER: Right?

6 MR. BENSON: It's an average.

7 MR. RUNNER: So -- so, we all -- we know, right  
8 off the bat, by taking the formula, we know that in  
9 theory it under -- it under reimburses some and it over  
10 reimburses some? Right?

11 MR. TUCKER: It could, yes.

12 MR. RUNNER: Well, no --

13 MR. TUCKER: Well --

14 MR. RUNNER: -- we know for sure it does,  
15 right? I mean, we know that, for instance, everybody  
16 out there isn't going to cost them \$250? Because the  
17 study --

18 MR. TUCKER: Per location.

19 MR. RUNNER: -- is an average.

20 MR. TUCKER: Per location.

21 MR. RUNNER: Yeah. Because the study's an  
22 average, right?

23 MR. BENSON: Correct.

24 MR. TUCKER: Correct.

25 MR. RUNNER: Okay. So, I just want to go back.  
26 So, I think we all -- we should always have known that  
27 not everybody is going to get a full reimbursement  
28 because the study is an average.

1           So, there are some people who are going to get  
2   under reimbursed.

3           MR. TUCKER: And we read the modification, the  
4   clause that modifies is that, "The Board of Equalization  
5   is there to set the amount of reimbursement."

6           It doesn't specify the costs that are to be  
7   included, but it -- it looks to the costs for the  
8   startup. And --

9           MR. RUNNER: What do you do with that line that  
10   says,

11                 "For any cost associated with the  
12   collection of the assessment."?

13          MR. TUCKER: -- Well, we are setting an amount  
14   of reimbursement to cover any costs associated.

15          MR. RUNNER: No, we're not. We've already just  
16   said that it doesn't cover everything.

17          MR. TUCKER: Well, it doesn't say --

18          MR. BENSON: Let me -- can I clarify what I --

19          MS. YEE: Yeah.

20          MR. BENSON: -- I'd like to clarify what I  
21   said --

22          MR. RUNNER: Okay.

23          MR. BENSON: -- what I meant when I said --

24          MR. RUNNER: Okay.

25          MR. BENSON: -- it's similar to what you were  
26   saying. That it is an average. There are -- there are  
27   certain retailers that may get more than other retailers  
28   because of the number of stores.

1           For example, Home Depot has 262 -- 262 stores.

2           MR. RUNNER: Right.

3           MR. BENSON: Their reimbursement would be --  
4 would be over \$65,000.

5           If we look at Lowes, they have a 113 stores.  
6 Their -- their reimbursement would be -- would be  
7 28,250. We believe that that may be enough for that  
8 larger retailer --

9           MR. RUNNER: Uh-huh.

10          MR. BENSON: -- to cover that cost.

11          It's the smaller suppliers that may have  
12 difficulty with covering the cost of the 250 because it  
13 is an average.

14          For clarification, I want to --

15          MR. RUNNER: Okay.

16          MR. BENSON: -- put that in.

17          MR. RUNNER: Let me just go -- okay, go ahead.

18          MR. TUCKER: I just want to clarify. It  
19 appears that you're focusing in on "any costs."

20          MR. RUNNER: Right.

21          MR. TUCKER: We see that as -- to mean that  
22 they're not required to specify -- that we haven't  
23 created a list of costs which qualify and costs which  
24 don't. We're looking at simply costs that are related  
25 to implementing the assessment.

26          So, I -- I think it's just the matter in that  
27 we read it in a different fashion. We don't read it to  
28 mean all costs.

1           We read it to mean --

2           MR. RUNNER: Well, let me ask you, if -- if --  
3 if the legislature intended it not to cover all costs,  
4 which I think it says, "any costs associated with the  
5 collection," why didn't they put the amount in?

6           MR. TUCKER: I don't know.

7           MR. RUNNER: I mean -- I mean -- I mean, if --  
8 if -- if -- if -- if -- if they felt that this was a  
9 partial reimbursement for \$250, why didn't they put the  
10 amount in?

11           Why did they say for us to come and do -- and  
12 take a look and then have a line in there that says,  
13 "Any costs associated with the collection of the  
14 assessment"?

15           MR. TUCKER: I don't know. I don't know why  
16 they didn't put that in there.

17           But we don't read that to mean --

18           MR. RUNNER: Okay.

19           MR. TUCKER: -- all costs.

20           MR. RUNNER: Okay. Let me ask -- let me ask  
21 the folks that were involved in some of the discussion  
22 at the legislature.

23           I would assume that this was a really important  
24 line in order to get this legislation passed, that there  
25 was a concern that there'd be a bunch of retailers who  
26 would end up with a -- with a -- with a cost, an  
27 exposure.

28           And, therefore, there was this desire to make

1 sure that a business -- businesses wouldn't all of a  
2 sudden be saddled with this cost.

3 Normally, when I was there, that would be the  
4 nature of this. And I don't know. Again, I'm -- when I  
5 would sit in the legislature and I would read a bill  
6 that says, "Any costs associated with the collection,"  
7 and I was voting on that, I would assume that that means  
8 any cost associated with the collection.

9 So -- at least that's how I would interpret it  
10 if it was before me at that point.

11 What -- what was the -- what -- how did you all  
12 anticipate as this was going through the legislature?  
13 What did you believe the intent was of this particular  
14 line in this particular effort?

15 I don't know who wants to answer that.

16 MR. DUNHAM: I'll -- I can answer that. I was  
17 told by at least one timber industry lobbyist that there  
18 was no intent to cost the dealers on this. And the --  
19 and the -- and you are correct, all costs -- all costs  
20 associated with setting this up and moving forward.

21 MR. RUNNER: Okay. I mean, from the retailers,  
22 I think you were going to make a mention?

23 MS. LEE: Yeah, sure. Mr. -- Board Member  
24 Runner, as Board Members are probably aware, the  
25 California Retailers' Association remained neutral  
26 throughout negotiations.

27 And part of it was an effort to support the  
28 goals of the legislation but part of it was also to try



1 to strike a -- a deal, if you will.

2 Part of it was we wanted to make sure that our  
3 members were kept whole for complying with the duties of  
4 AB 1492. And part of the tension was that we couldn't  
5 come to an agreement on the dollar amount.

6 So, unlike the tire fee and unlike the E-waste  
7 law that clearly states an ongoing percentage for cost  
8 recovery for retailers is -- we could not come with  
9 consensus on that issue.

10 So, the agreement was to have the BOE -- the --  
11 arguably the State's tax authority -- decide on this  
12 matter.

13 Our hope was to leave it open-ended. Our hope  
14 was that the BOE would do their independent cost  
15 analysis to see how much retailers -- how much the  
16 retailers' costs would be and -- and to -- and to decide  
17 that matter (unintelligible) --

18 MR. RUNNER: And as a -- as a negotiator in  
19 that discussion then did the retailers interpret that  
20 line, "Any costs associated with the collection of  
21 assessment," mean that the retailers would be in rev --  
22 in -- be reimbursed all costs of taking on this new  
23 regulation?

24 MS. LEE: In fairness, I wasn't in -- I wasn't  
25 in the room.

26 We had our contract lobbyist negotiating many  
27 of those points, but --

28 MR. RUNNER: Would you assume that that would

1 be the position that the retailers would want to take  
2 for their --

3 MS. LEE: I would assume so, yes.

4 MR. RUNNER: -- okay. Let me ask the Forestry  
5 Association.

6 Was it the Forestry's Association's position  
7 that this was a partial reimbursement?

8 MR. BISCHER: It was our -- this legislation,  
9 as -- as it dealt with both the -- the determination of  
10 what it applied to and -- and allocated that  
11 responsibility to emergency rulemaking by the Board of  
12 Forestry --

13 MR. RUNNER: Right.

14 MR. BISCHER: -- and they allocated -- the  
15 legislation allocated the responsibility for eval -- for  
16 developing a -- in effect, an average price that would  
17 cover the one-time cost of -- of --

18 MR. RUNNER: I don't see --

19 MR. BISCHER: -- implementing the --

20 MR. RUNNER: -- I don't see --

21 MR. BISCHER: -- bill.

22 MR. RUNNER: -- any of that language just said  
23 in the bill, "The average price for one time."

24 MR. BISCHER: No, it is a single cost that the  
25 Board is -- as staff as --

26 MR. RUNNER: Right, right, I'm just -- again,  
27 just clarifying that it's that and you believe that the  
28 intent was to create an average price?

1 MR. BISCHEL: Well, let me step back and say it  
2 was in the intent for the State Board of Equalization to  
3 establish a reimbursement price --

4 MR. RUNNER: Okay.

5 MR. BISCHEL: -- that was reflective of the  
6 cost.

7 MR. RUNNER: Okay, okay. Good, that's how I  
8 interpret this too, a reimbursement to the cost.

9 Okay, thank you.

10 MR. HORTON: Member Yee.

11 MS. YEE: Thank you, Mr. Chairman.

12 I think we're focused on one aspect of the bill  
13 without regard to what the original intent of the bill  
14 was and why the assessment was put into place.

15 And I would imagine that the representative  
16 from the Forestry Association, you probably took  
17 interest in some of the other parts of the bill with  
18 respect to some of the activities that the Department of  
19 Forestry would continue to be able to provide, given  
20 that the impetus for this assessment proposal in the  
21 first place was to offset some general fund expenditures  
22 for those activities. Is that --

23 MR. BISCHEL: Absolutely.

24 MS. YEE: -- so, your focus really wasn't on  
25 the reimbursement aspect of it?

26 MR. BISCHEL: We did not -- this was not the  
27 focus of our -- of our negotiations.

28 MS. YEE: Okay.

1 MR. BISCHER: Certainly there -- retailers were  
2 there and most ably were representing the retailers and  
3 we were sponsors of the -- of the legislation.

4 MS. YEE: Okay, that's fine.

5 And I know the retailers and some of the other  
6 suppliers were very interested in terms of what your  
7 costs of compliance would be. And, so, you were very,  
8 very focused on that aspect of the bill.

9 Okay. So, I think the legislature did a really  
10 wonderful thing and we thank them for punching it all to  
11 the Board of Equalization.

12 And -- but here's -- here's the dilemma that  
13 we're in -- we are -- and, first, I want to thank the  
14 staff for the tremendous work that they have done in  
15 terms of really trying to get a handle on legislative  
16 intent and looking at how to fashion a -- the framework  
17 of a reimbursement program that would capture the intent  
18 and spirit of the law, albeit, even trying to do so on a  
19 practical level certainly doesn't cover the costs that  
20 many of the retailers and the suppliers are going to be  
21 experiencing.

22 I also just wanted to acknowledge that I think  
23 that many of us received correspondence today from one  
24 of the committee consultants in the Assembly about the  
25 bill. And -- and here's the dilemma we're in, the idea  
26 behind the assessment was to, essentially, save the  
27 general fund about 15 and a half million dollars.

28 And -- and the assessment would, essentially,

1 take the place of the general fund dollars that  
2 previously had gone towards the Forestry's -- Department  
3 of Forestry's activity for timber harvest plan review  
4 and also look at some forest -- forest restoration  
5 projects.

6 My questions really are to the staff because  
7 these are emergency regulations. I think when --  
8 certainly looking at the intent of what the legislature  
9 wanted the Board to do, I don't think there was,  
10 anywhere in the legislation, any citation of actual  
11 costs that would be reimbursed.

12 Is that true?

13 MR. TUCKER: No, there is not.

14 MS. YEE: Okay. I think also with respect to  
15 the analyses of the bills and -- and, frankly, without  
16 us having been in the room, in the negotiations, that's  
17 what we're relying on -- is that the idea here with the  
18 reimbursement would be to look at reimbursement for the  
19 costs of setting up collection systems for purposes of  
20 collecting the assessments.

21 Is that --

22 MR. TUCKER: That is correct.

23 MS. YEE: Okay. And the -- and as you continue  
24 to look at how to put together this reimbursement  
25 framework, how did you determine whether to go with a  
26 per location reimbursement or per retailer  
27 reimbursement?

28 MR. BENSON: We looked at per location because

1 we felt that \$250 per retailer would not be fair. For  
2 example, Home Depot, again with 262 retailers, will --  
3 you know, \$250 is not going to take them very far with  
4 262 locations -- 262 locations.

5 There are also other smaller retailers that may  
6 have five to ten or, you know, locations and things like  
7 that. So, we wanted to try to accommodate them and any  
8 costs associated with -- with them.

9 And, so, that's how we came up with the -- the  
10 per location.

11 MS. YEE: Okay.

12 MR. BENSON: As opposed to per retailer.

13 MS. YEE: Okay.

14 MR. BENSON: We thought it would be a fairer  
15 measure than per retailer.

16 MS. YEE: Okay. So, is -- when you talk about  
17 the range of retailers being from whatever, the 15,000  
18 to the high end of what 30 some odd thousand, are you  
19 talking about --

20 MR. BENSON: Huh --

21 MS. YEE: -- retailer --

22 MR. BENSON: -- we feel that it's 10,000  
23 locations, yeah.

24 MS. YEE: Okay, locations, okay.

25 MR. BENSON: That's --

26 MS. YEE: Got it.

27 MR. BENSON: -- that's what --

28 MS. YEE: Okay.

1 MR. BENSON: -- research has come up with --

2 MS. YEE: All right.

3 MR. BENSON: -- in terms of terms our estimate.

4 MS. YEE: Okay.

5 MR. BENSON: So --

6 MS. YEE: Now -- now, as you look at those  
7 locations, what type of retailers do they comprise?

8 MR. BENSON: -- this -- the -- probably  
9 building material warehouses, building material supply  
10 stores, okay.

11 That's -- those are the locations. It's -- it  
12 is based on the NAICS Code --

13 MS. YEE: Okay.

14 MR. BENSON: -- that we used. Humm --

15 MS. YEE: Are we excluding any potential --

16 MR. BENSON: Pardon me?

17 MS. YEE: Are we excluding any potential  
18 retailers of engineered wood products?

19 MR. BENSON: I'm sorry.

20 MS. YEE: Are we excluding any potential -- are  
21 we potentially excluding any other retailers?

22 MR. BENSON: Excluding, no.

23 MS. YEE: Okay. You think the NAICS Code  
24 captures all that?

25 MR. BENSON: I think we're capturing all of  
26 them --

27 MS. YEE: All right, okay.

28 MR. BENSON: -- that could possibly be out

1     there, including the small nurseries and the things like  
2     that that may have very little in terms of the taxable  
3     goods that would be -- that would fall under AB 1492.  
4     We think we've captured them all.

5             MS. YEE:   Okay.   So -- I mean, I understand the  
6     \$250 dollars that's being proposed is definitely less  
7     than adequate.

8             And I certainly could make a case for even the  
9     larger retailers that there are significant costs  
10    associated with that to the extent that we're talking  
11    about a California only assessment and there's  
12    significant programming that would have to done related  
13    to that.

14            But the -- the objectives that we have to meet,  
15    in terms of fashioning a reimbursement program, really  
16    also has to get to the outcome of what the bill was  
17    originally trying to do, and that is to provide needed  
18    funds for the Department of Forestry to continue their  
19    activities with respect to timber harvest.

20            So, I'm a little concerned about how we move  
21    forward and continue to do that, given the potential  
22    costs of what the assessment may result in -- not only  
23    with respect to the reimbursement to retailers, but also  
24    our own administrative costs.

25            So, the 10,000 retailer locations, plus our  
26    administrative costs, what's the total amount of that?  
27    Do you recall?

28            MR. BENSON:  I think the admin cost 2. -- Liz



1 could best speak to that.

2 MS. HOUSER: 2.4 ongoing.

3 MR. BENSON: 2.4 million ongoing.

4 MS. YEE: Okay. And -- okay.

5 So, I think, Mr. Chairman, I -- we are kind of  
6 caught between a rock and a hard place. It's -- but I  
7 think, given the objectives of the legislation overall,  
8 we are going to have inadequate reimbursement to  
9 retailers, even for -- even if we were to define the  
10 costs as setup costs for collection systems. We know  
11 those costs are going to be greater than \$250.

12 I think there will probably need to be an  
13 opportunity before the legislature to re-visit this  
14 whole reimbursement issue.

15 I think our hands are tied, to some extent,  
16 with respect to what that looks like and trying to  
17 really honor the -- the overall objective of the -- of  
18 the bill.

19 So, I just wanted to kind of put both those  
20 sides up for discussion because we're not kind of  
21 picking this out of a hat and doing this in a vacuum.  
22 We really are trying to comply with the overall -- all  
23 of the provisions of the bill.

24 And by just looking at the reimbursement aspect  
25 of it, without looking at what the, you know, main  
26 intention of the bill was with respect to generating  
27 revenue for the Department of Forestry, that's -- we  
28 have to look at the totality of what the bill is

1 intended to do.

2 Thank you, Mr. Chairman.

3 MR. HORTON: Further discussion, Members?

4 Mr. Runner.

5 MR. RUNNER: Just a quick observation.

6 Yeah, my understanding is that -- I mean, again  
7 it's hard for us to get in the middle of what the  
8 intention of the bill was when the language, it seems to  
9 me, says that our responsibility is to go ahead and make  
10 sure that the retailers have their costs covered.

11 And again -- and I guess I'm trying to take a  
12 long view of this, over the next ten years, this  
13 particular fee is going to raise well over \$300 million.  
14 So, you know, whether or not the issue of reimbursement  
15 to retailers to start up ends up being 5 million, 10  
16 million, 15 million dollars, it seems to me we are  
17 a long ways from interrupting the goal of the  
18 legislation, which, over the next ten years alone, but  
19 it goes into perpetuity, is going to collect hundreds of  
20 millions of dollars.

21 The issue for us, it seems to me, is the intent  
22 of the legislation, which says, I believe, that they  
23 just didn't want retailers to have to bear the costs.  
24 They just didn't want the -- again, I mean -- I mean,  
25 it's one thing to be talking about the Home Depots of  
26 life and they'll figure out how to do it.

27 My problem is I've got hundreds of these little  
28 retailers, thousands of these little retailers in my

1 district. And they -- they could care less about what  
2 the big picture of the legislature is. What they're  
3 concerned about is staying in business.

4 And to me the fact is that the State's going to  
5 get plenty of money over the next 10 years, 15, 20, 30  
6 years over this particular assessment. The problem is  
7 it's the businesses this year that are the ones that are  
8 saddled with the costs.

9 So, it seems to me -- again, stepping back to  
10 say,

11 "Hey, all's we're trying to do and all the  
12 legislature was trying to do, I believe, is to  
13 clarify that retailers shouldn't be holding the  
14 bag for the costs."

15 Now we can go a long ways and we'll have to  
16 figure out how we do get to that matrix and how to  
17 get -- find that reimbursement. But it's clear the  
18 legislature didn't intend for retailers to be hurt with  
19 this. They were trying to hold them harmless. And if  
20 we don't have an adequate reimbursement, we haven't  
21 accomplished that.

22 And -- I mean -- I think I'm getting contacted  
23 right now by a couple of the legislators who actually  
24 voted for this and I'm hearing that they thought  
25 retailers would be fully reimbursed.

26 So, again, I get the big picture issue. But  
27 the big picture needs to be not what's going -- not --  
28 not this year's effect, but what the effect, in terms of

1 public policy over a long period of time.

2 And I don't believe the intent was to try to  
3 put the burden, basically a tax increase, because,  
4 again, this is -- this is, in essence, a tax increase to  
5 small business -- money out of their pocket in order to  
6 do something that the State is asking them to do -- when  
7 it is that the legislation itself says that they  
8 shouldn't have to pay for it.

9 So, I -- I mean, I -- to me, it's pretty clear.  
10 Now I guess the problem is that when it was going  
11 through the legislature, people lowballed the costs.

12 But that doesn't change what the intent is and  
13 what our responsibility is in the legislation and to  
14 these small businesses.

15 MR. HORTON: Thank you. Further discussion,  
16 Members?

17 This has been a very valued process, I think,  
18 hearing from all the parties, those in support and  
19 opposition as well as from the Department.

20 I certainly would be supportive of us going  
21 through and would anticipate that we would go through  
22 some rulemaking process in order to receive more  
23 in-depth, methodical informative testimony, as well as  
24 factual presentation to determine a number of factors --  
25 not only -- one, starting with the premise of the  
26 litigation and the interpretation of the litigation  
27 itself from a legal perspective as --

28 MS. MANDEL: Do you mean legislation? Sorry.

1 MR. HORTON: Yes, legislation.

2 I'm sorry, what did I -- must be this cold  
3 talking.

4 The legislation relative to cost, are we  
5 referring to setup costs? Are we referring to cost  
6 reimbursement? Are we referring to an ongoing cost  
7 reimbursement? Those are the distinguishable issues  
8 that seem to be out there.

9 Does the Board of Equalization have  
10 quasi-legislative authority to actually do something  
11 other than what is mentioned in the legislation?

12 Mr. Runner spoke to the -- striking an  
13 equitable balance over a long term perspective, yet  
14 trying to accomplish the intent of the legislation, as  
15 pointed out by Member Yee.

16 So, those matters will be deliberated during  
17 the rulemaking process. We are at an unfortunate  
18 junction, as you always are when you are required to  
19 implement emergency regulations and that we've got to  
20 move forward based on the information that we have  
21 currently, and then adjust as we go through the  
22 rulemaking process.

23 My concern is a concern of whether or not there  
24 would be a challenge and, as a result of that challenge,  
25 there is a writ of mandate that will invalidate the  
26 regulation promulgated by the Board of Equalization, if,  
27 in fact, we are not objective and balanced in our  
28 assessment in determining what is fair and equitable to

1 the retailers that have to bear the burden of the costs.

2 Obviously, the legislature intended for some  
3 costs of some sort to be reimbursed. And, so, defining  
4 that and quantifying it is the challenge before this  
5 body.

6 Unfortunately, as we are not in a position as  
7 legislators are, to when they have bad legislation,  
8 subject to litigation, to do a subsequent legislation to  
9 bring clarity. That is punted to the judicial body. In  
10 our situation, we're back to the legislature.

11 So, I guess what I'm saying is I could ask a  
12 series of questions of the Legal Department in regards  
13 to their interpretation of the legislation, but I think  
14 it's clear that they have interpreted it a particular  
15 way.

16 I could ask questions of the economists, but I  
17 do want to say that \$250 per location -- the  
18 methodology, in and of itself, creates a windfall or a  
19 loss, depending on where you are in respect to the  
20 universal -- or your baseline, if you will.

21 That, in and of itself, exemplifies some  
22 inequity whenever you create those windfalls. And  
23 particularly when the -- and it seems to me that the  
24 intent is to try to get to something actual. And, so,  
25 possibly a flat rate of some sort that is fair and  
26 equitable to all parties involved.

27 This is one of those -- what they refer to as  
28 legislative sausage. And now they've asked us to

1 prepare and serve it up -- which is always quite  
2 interesting.

3 So, Members, in our deliberation on the matter  
4 before us, I would certainly encourage that we also  
5 consider, I think it's anticipated by the Department,  
6 that we establish a rulemaking process to take all of  
7 those matters in consideration and assemble then  
8 something based on what we have here, acknowledging the  
9 inequity that seems to be acknowledged by all parties,  
10 the disputes as it relates to what is cost, what is  
11 reimbursable, what is not and so forth.

12 And let's see if we can establish a process in  
13 which to get to -- to strike a balance, if we can, even  
14 if that balance is a reimbursement over a longer period  
15 of time, but not a reoccurring or administrative  
16 reimbursement.

17 I think it's very clear that the legislation  
18 did not intend to have an ongoing administrative  
19 reimbursement, that this is a one-time reimbursement,  
20 but yet, still, how do we get there?

21 And yet, at the same time, this body can't  
22 negate the overall intent of the legislature in passing  
23 the legislation.

24 Clear enough, all parties seem to see this as a  
25 revenue generating measure based on the presumption that  
26 it requires two-thirds vote and that there was no  
27 offset -- that this is a revenue generating measure.

28 And, so, the debate whether it's a long term

1 revenue generation, short term -- all of that will,  
2 hopefully, be resolved in the rulemaking process.

3 Quite frankly, I think we can get there.  
4 Unfortunately, we got bad legislation that could be  
5 subject to some sort of litigation.

6 And let's see if we can do what the legislature  
7 didn't do and, that is, bring all the parties together  
8 and see if we can come up with something that's fair and  
9 equitable and still accomplishes the leg -- the intent  
10 of the legislature.

11 Further discussion or comments, Members?

12 MR. RUNNER: Just a quick observation.

13 MR. HORTON: Mr. Runner.

14 MR. RUNNER: The BOE had no problem fully  
15 getting reimbursed for the cost of implementing this  
16 legislation. We have estimated that it's going to take  
17 18,000 hours to program our computers in order to do  
18 this -- millions of dollars.

19 So, I appreciate the fact that we're concerned  
20 about keeping the intent of the legislation whole, but  
21 it certainly isn't -- we certainly didn't take that to  
22 heart when we talked about what our costs were. We went  
23 ahead and said, "We need all of our costs."

24 So now, to all of a sudden, be nickel and  
25 diming little businesses, say, "Well, we need you to be  
26 patient. We need you to wait for our rulemaking  
27 process," it just seems to me to be wrongheaded.

28 These are the businesses that are employing



1 Californians today. These are the businesses that are  
2 helping produce our sales tax every day. And to now  
3 throw greater responsibility on them and taking money  
4 out of their pocket just doesn't make sense.

5 Now, I actually could be okay with a lower  
6 amount, \$200, but then add in there that there is a  
7 process to which retailers can come forward with their  
8 real costs. So, you set a floor. It can be a lower  
9 floor and then we set a process that says, "Fine, if you  
10 think you -- it cost you more than --," then let's  
11 provide a path for them in order to really demonstrate  
12 that."

13 And we don't need to upgrade people's computer  
14 systems. They'll need to be upgraded. We don't need to  
15 buy new stuff.

16 But, at the same time, I'm a little embarrassed  
17 that we are not afraid to ask for our full reimbursement  
18 for costs, but we're not willing to ask for full  
19 reimbursement for businesses in California.

20 MR. HORTON: I feel somewhat compelled to  
21 clarify.

22 MR. RUNNER: No, you don't have to clarify, you  
23 could just state your own -- your own opinion.

24 MR. HORTON: Well, on the behalf of the Board,  
25 as it relates to the cost of administering the program,  
26 the Board certainly is a -- the Board certainly is a  
27 body that has to administer not just one transaction or  
28 not just one case, we're looking at all of the cases,

1 all of the returns and so forth.

2 And, arguably, the amount that the Board has  
3 asked for doesn't nearly get to what the overall costs  
4 would be for us to manage in this particular trans --  
5 transaction.

6 But, you know, that's a debatable thing that  
7 would occur down the road. And it sounds almost as if,  
8 though, we're on the same page with Mr. Runner --  
9 although certainly articulated a little bit differently.

10 But it sounds like we're somewhat on the same  
11 page and that is, let's establish a process by which we  
12 determine what that cost is. And that's what is  
13 referred to as a rulemaking process. And, hopefully, we  
14 will get there at the end of the day.

15 Member Yee.

16 MS. YEE: I was just going to renew the  
17 invitation to the retailers and others, if you could  
18 really bring more to light to what some of these true  
19 costs are.

20 Obviously, it varies with respect to the type  
21 of retailer, size of retailer, but, you know,  
22 obviously -- and I think all of us are feeling not great  
23 about not being able to deal with this added burden on  
24 retailers, given the bill.

25 But, at the same time, I want to be sure that  
26 our process is reflective of trying to get the best  
27 information possible relative to what these true costs  
28 are.

1 I mean, if we were to look at, you know, 10,000  
2 retail locations and let's say the costs really were  
3 4,000 per location, we've already exceeded what we  
4 think -- what -- what was intended in terms of what the  
5 term of the offset would be.

6 So, we just have to continue to get the best  
7 information possible.

8 MR. HORTON: Yeah, there is a -- there is a  
9 methodology in force to get there, it sounds like, which  
10 is why this -- this discussion or this debate, if you  
11 will is so helpful to me. I think there is a  
12 methodology as far as to get there to the actual cost,  
13 and yet, still, not negate the intent of the legislation  
14 to actually generate revenue.

15 Because at the end of the day, this was a zero  
16 sum game. Had this not occurred, the costs would have  
17 been passed on some other way. The Department of  
18 Forestry would have had to incur some additional budget  
19 challenges. And, ultimately, it's going to be squeezed  
20 out somewhere.

21 This is not necessarily the best way to govern.  
22 And in my perspective, I'm of a mind that we ought to be  
23 stimulating the economy in a number of different ways.

24 But it is what it is. And it is before us  
25 to -- to interpret. And that's what our  
26 responsibilities are.

27 Miss Lee.

28 MS. LEE: Chairman Horton, if I may, just add

1 to that point, sort of piggybacking on what Board Member  
2 Yee raised, as well as you and several Members have  
3 reiterated -- the need to establish a process, determine  
4 the true cost -- or as close as we can to that number,  
5 whatever it is.

6 It should probably bring to light, just for the  
7 sake of public record, that it was noted on a previous  
8 BOE analysis that because the intent was unclear -- or  
9 at least it was interpreted to be unclear -- that there  
10 was going to be an attempt to submit a letter to the  
11 Journal to clarify the intent of the legislation.

12 When we read that in the BOE analysis, we  
13 subsequently followed up with the Governor's office,  
14 with committee staff, et cetera, to figure out why that  
15 letter was going to be submitted, given that the  
16 agreement was for the BOE to establish that number. So,  
17 the letter was not submitted to the file to clarify the  
18 intent.

19 However, we have heard that there have been  
20 subsequent attempts to submit a letter to the Journal to  
21 clarify that the intent of the legislation was to  
22 reimburse one time for several hundred dollars.

23 And I think that would be counterproductive,  
24 given what we've discussed today. I just wanted to shed  
25 light on that effort.

26 MR. HORTON: Member Mandel.

27 MS. MANDEL: Well, I can just say on the one  
28 time that it was our reading of the language of the

1 statute, like staff, that it was a one-time  
2 reimbursement to be taken on the first return. And if  
3 that's not sufficient funds from this fee, subsequent  
4 returns.

5 That's -- our understanding was that it was a  
6 one time.

7 MS. LEE: If I may?

8 MS. MANDEL: Just stating that was --

9 MS. LEE: Sure.

10 MR. HORTON: Member Steel.

11 MS. STEEL: Just comment. AB 1492, this is  
12 unjustified lumber tax that, you know, I was not really  
13 happy begin with.

14 And then the staff came out with \$250 per  
15 location. This is just almost -- it's -- it's -- it's  
16 really -- I mean, as is, that this lumber tax itself is  
17 going to hurt not just retailers but all the building  
18 industries in California that they are just building a  
19 little bit of moving up. Now we are pouring cold water  
20 on the top of it.

21 But I totally agree with Member Runner that,  
22 you know, when I came to the Board, then I asked Board  
23 to recalculate from monthly interest rate to one day  
24 interest rate. And staff came out with \$750,000 cost  
25 begin with and it went down to 25,000 something.

26 So, you know, when we are changing one glitch  
27 of the computer system that we are talking about tens of  
28 thousands of dollars and then we are asking this

1 money -- you know what, if we can be fair and try to, at  
2 least, listen to these retailers and manufacturers and  
3 that's the least we can do.

4 And this \$250 for .1 percent of total sales,  
5 it's almost outrageous number that I am looking at it.  
6 So, for the future, that, you know, how much we are  
7 collecting from this lumber tax, I think something, the  
8 least we can do -- they going to lose so much businesses  
9 because of this tax. So, you know what, at least we can  
10 listen to retailers and manufacturers and come up with  
11 a fair number. That's all I'm asking here.

12 And this one, you know, I try to abstain with  
13 this bill, I mean this -- the recommendation itself  
14 because I wasn't happy with AB 1492 that -- but now I  
15 really have to step in. And I want to work with, you  
16 know, these retailers that how much it's going to cost.  
17 It's not just cash registers. It used to be just  
18 changing one chip that's going to work. Now it's not  
19 like that.

20 So, we really have to do -- put little more  
21 work in it to help these businesses. That's the least  
22 we can do. That's what I think.

23 MR. HORTON: Okay. Question of the Department.  
24 Can you elaborate on what the rulemaking process will  
25 entail.

26 MR. TUCKER: For the emergency regulation or  
27 for the --

28 MR. HORTON: In the event that the Board

1 Members are desirous to establish a rulemaking process  
2 to resolve some of these issues.

3 MR. TUCKER: -- okay. First -- let me step  
4 back then.

5 First what we would do is we would approve and  
6 adopt the rulemaking -- the emergency regulation and  
7 then that would be published and then forwarded to OAL.

8 Then this could be referred to -- what we would  
9 recommend would be that we then go into a permanent  
10 regulation. And that would be referred to the Business  
11 Taxes Committee.

12 MR. HORTON: Uh-huh.

13 MR. TUCKER: The Business Taxes Committee would  
14 have a number of options. Arguably, they could simply  
15 publish the permanent regulation.

16 Staff, however, has worked up a schedule. So,  
17 if -- at the pleasure the BTC, they could hold  
18 interested parties meetings. We've already put together  
19 schedules for one or two, at the -- at the pleasure of  
20 the Business Taxes Committee.

21 So, we hold -- just -- and this is tentative, I  
22 -- we even have prospective dates. There -- if we were  
23 going to have simply one interested parties meeting it  
24 would be on -- tentatively scheduled for January 10th,  
25 2013.

26 Prior to that, we would have an analysis  
27 provided to interested -- let me step back one step. An  
28 analysis provided to interested parties on

1 December 18th, 2012, an interested parties meeting on  
2 January 10th, 2013.

3 We would -- interested parties would be able to  
4 respond by January 18th. And this would -- the  
5 materials would be provided to the Board in March.

6 If we were to choose two interested parties  
7 meetings, then we would have a second meeting on  
8 February 28th -- interested parties would respond by  
9 March 15th and then that would go to the Board by  
10 May 17th, 2013.

11 MR. HORTON: Okay. Further discussion,  
12 Members?

13 MS. YEE: Mr. Chairman.

14 MR. HORTON: Member Yee.

15 MS. YEE: I just want to thank all of the  
16 public testimony today. And I -- I know this is a  
17 burden that is facing you without a lot of advance  
18 notice and certainly want to continue to invite your  
19 participation as we try to work through this  
20 reimbursement program and really would like to use our  
21 rulemaking process to try to, you know, vet some of  
22 these remaining issues.

23 My sense is that there will be a high degree of  
24 interest in the legislature, and certainly on the part  
25 of the administration, that there be as -- as -- the  
26 fullest extent of compliance with respect to collection  
27 of the assessment as possible.

28 But certainly I think these concerns that we've



1 heard today, they're going to be hearing about up the  
2 street just the same. And I don't know what the  
3 legislature will do, but I think part of this is going  
4 to be, you know, obviously trying to put into place  
5 what's already been enacted, but understanding full well  
6 that there are outstanding concerns that still,  
7 hopefully, we'll get some vetting here to the full  
8 extent of our jurisdiction here, but also may re-visit  
9 it in the legislature as well.

10 MR. HORTON: Okay. Further discussion,  
11 Members?

12 Hearing none, is there a motion?

13 MS. YEE: I'll move to adopt the emergency  
14 regulation that's before us and authorize staff to  
15 commence rulemaking by publishing and -- the regulation  
16 for notice and comment.

17 MR. HORTON: Okay. So moved by Member Yee. Is  
18 there a second?

19 MS. MANDEL: I'll second.

20 MR. HORTON: Second by Member Mandel.

21 Objection?

22 MR. RUNNER: Objection.

23 MR. HORTON: Objection noted.

24 Is there a desire to bifurcate this or just  
25 objection as it's stated?

26 MR. RUNNER: Yeah, if you would like to -- it  
27 would be helpful to bifurcate the -- the fee portion --  
28 the reimbursement portion, thank you.

1 MR. HORTON: It's up to the maker of the  
2 motion.

3 MS. YEE: Hmm --

4 MR. HORTON: Motion as-is or bifurcated?

5 MS. YEE: -- yeah, that's fine.

6 MR. HORTON: Okay. Moved by Member Yee to  
7 adopt staff -- adopt staff recommendation for emergency  
8 regulation, second by Member Mandel, with objection  
9 noted.

10 Member -- Ms. Richmond, please call the roll.

11 MS. RICHMOND: Mr. Horton?

12 MR. HORTON: Aye.

13 MS. RICHMOND: Ms. Steel?

14 MS. STEEL: I abstain from voting in protest  
15 unjustified lumber tax.

16 MS. RICHMOND: Mr. Runner?

17 MR. RUNNER: No.

18 MS. RICHMOND: Ms. Yee?

19 MS. YEE: Aye.

20 MS. RICHMOND: Ms. Mandel?

21 MS. MANDEL: Aye.

22 MS. RICHMOND: Motion carries.

23 MR. HORTON: Moves to establish the rulemaking  
24 process to the Business Tax Committee by Member Yee,  
25 second by Member Mandel.

26 Objection?

27 Hearing none, such will be the order.

28 MS. MANDEL: And just -- are you going --

1 MR. HORTON: Member Mandel.

2 MS. YEE: Yeah, we're also, Mr. Chairman --

3 MR. HORTON: Uh-huh.

4 MS. YEE: -- let me work with staff on some of  
5 the dates because I want to be sure that we're mindful  
6 of the release date of the Governor's budget in 2013.

7 MR. HORTON: Okay.

8 MS. YEE: Okay.

9 MR. HORTON: Fabulous.

10 Thank you very much for appearing before us.  
11 This is very helpful. We certainly encourage you to  
12 participate throughout the rulemaking process. We look  
13 forward to an equitable, balanced conclusion.

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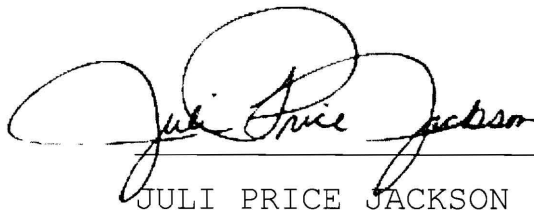
28

1 REPORTER'S CERTIFICATE.  
2

3 State of California )  
4 ) ss  
5 County of Sacramento )  
6

7 I, JULI PRICE JACKSON, Hearing Reporter for the  
8 California State Board of Equalization certify that on  
9 OCTOBER 23, 2012 I recorded verbatim, in shorthand, to  
10 the best of my ability, the proceedings in the  
11 above-entitled hearing; that I transcribed the shorthand  
12 writing into typewriting; and that the preceding pages 1  
13 through 60 constitute a complete and accurate  
14 transcription of the shorthand writing.  
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16 Dated: NOVEMBER 5, 2012  
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20 JULI PRICE JACKSON

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**2012 MINUTES OF THE STATE BOARD OF EQUALIZATION****Tuesday, October 23, 2012****TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE****[I2] OFFER-IN-COMPROMISE RECOMMENDATIONS**

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the Offer in Compromise Recommendations of *1a Bruce Terrance Busby; 1b Kathleen Ann Busby; 1c Atwill, L.L.C.; 2 Stephen Williams Churchill; 3a Karen P. Kukkonen; 3b Fountains Plus Garden Center, Inc.; 4 Barbara Renae McWherter; 5 Michael Timothy Scott, Jr.; 6 Floyd Thorne; 7 Wionics Technologies, Inc.; and, 8 Tommy Vaughn Woods;* as recommended by staff.

**CHIEF COUNSEL MATTERS****[J] RULEMAKING****J1 Adoption of Emergency Regulations – Lumber Products Assessment**

Robert Tucker, CEA, Legal Administration/Tax and Fee Programs Division, Legal Department, and Stephen Smith, Tax Counsel IV, Legal Administration/Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for Board authorization to promulgate an emergency regulation to implement the provisions of AB 1492 (Chapter 289, Stats of 2012) (Exhibit 10.3).

Speakers: Mandy Lee, Director, Government Affairs, California Retailers Association  
Gerry Charron, Software Development Manager, Stock Building Supply  
Ken Dunham, Executive Director, West Coast Lumber & Building Material Association  
Craig Evans, Vice President, Learned Lumber  
David Bischel, President, California Forestry Association

Action: Ms. Yee moved to adopted the emergency regulation *Lumber Products Assessment* as recommended by staff and direct staff to commence rulemaking by publishing the regulation and notice to comment. The motion was seconded by Ms. Mandel but no vote was taken.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Mr. Runner voting no, Ms. Steel abstaining, the Board adopted the emergency regulation *Lumber Products Assessment* as recommended by staff.

Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board directed staff to begin the rulemaking process and referred the matter to the Business Tax Committee.

## **Assembly Bill No. 1492**

### **CHAPTER 289**

An act to add Section 13009.2 to the Health and Safety Code, and to amend Section 4590 of, to add Article 9.5 (commencing with Section 4629) to Chapter 8 of Part 2 of Division 4 of, and to repeal Section 4629.10 of, the Public Resources Code, relating to forest resource management, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 2012. Filed with  
Secretary of State September 11, 2012.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1492, Committee on Budget. Forest resource management.

(1) Existing law, with certain exceptions, makes any person who negligently or in violation of the law sets a fire, or who fails or refuses to correct a fire hazard prohibited by law, liable for the fire suppression costs and for the costs of providing rescue or emergency medical services, and provides for collection of the charge. Under existing law, public agencies participating in fire suppression, rescue, or emergency medical services may bring a civil action to recover costs incurred by those agencies.

This bill would provide that, in a civil action by a public agency to recover damages caused by a fire, pecuniary damages must be quantifiable and not unreasonable in relation to the prefire fair market value of the property, taking into consideration the ecological and environmental value of the property to the public. The bill would limit the pecuniary damages that the public agency may recover to specified ecological and environmental damages and certain restoration and rehabilitation costs, replacement or acquisition costs, or diminution in value of property as a result of the fire, including lost timber value, and short-term costs related to immediate damages resulting from the fire. Further, the bill would prohibit a public agency from seeking to enhance the claim for environmental damages under other provisions of law permitting civil damages for injuries to trees and timber.

(2) The Z'Berg-Nejedly Forest Practice Act of 1973 prohibits a person from conducting timber operations, as defined, unless a timber harvesting plan prepared by a registered professional forester has been submitted to, and is approved by, the Department of Forestry and Fire Protection.

The act provides that a timber harvesting plan approved on or after January 1, 2012, is effective for a period of not more than 3 years and may be extended by amendment for a one-year period, up to a maximum of 2 one-year extensions if 2 requirements are met. The act provides that a plan that is approved on or after January 1, 2010, to December 31, 2011, inclusive,

may be extended by amendment for a 2-year period, up to a maximum of 2 2-year extensions. The act requires the notice of extension to include the circumstances that prevented a timely completion of the work under the plan and an agreement to comply with the specified law, rules, and regulations as they exist on the date the extension notice is filed.

This bill would provide instead that a timber harvesting plan approved on or after July 31, 2012, would be effective for a period of not more than 5 years unless extended and would instead authorize the extension of the plan by amendment for a 2-year period. The bill would provide instead that a timber harvesting plan approved between January 1, 2010, and August 31, 2012, inclusive, may be extended by amendment for a 2-year period, up to a maximum of 2 2-year periods and would require the notice of extension for that plan to be provided to the department not sooner than 140 days, but at least 10 days, prior to the expiration date of the plan.

(3) This bill would establish the Timber Regulation and Forest Restoration Fund in the State Treasury, and would require that all revenues received from a specified assessment described in (4) and (5) below imposed on the retail sale of lumber products, as defined, and engineered wood products, as defined, less amounts deducted for refunds and reimbursements, be deposited into the fund. The bill would require that moneys deposited into the fund be expended, upon appropriation by the Legislature, for specified administrative costs, and for purposes relating to the regulatory activities of the department and other state and local agencies involved in the management of forest lands, and the costs of managing forest resource programs in the state, for certain grants to state and local public agencies, qualified nonprofit organizations, and recognized Indian tribes for fire protection and suppression, and for grants to fund restoration on timberland, as prescribed.

This bill would require the State Board of Forestry and Fire Protection, on or before October 1, 2012, to adopt a regulation that interprets and makes specific the lumber products and the engineered wood products that the board determines shall be subject to the lumber products assessment imposed by the bill, as prescribed.

The bill would require the Secretary of the Natural Resources Agency, on or before January 10, 2013, and each January 10 thereafter, in conjunction with the 2014–15 Governor’s Budget and the Governor’s Budgets thereafter, in consultation with the Secretary for Environmental Protection, to submit a report to the Joint Legislative Budget Committee on the activities of all state departments, agencies, and boards relating to forest and timberland regulation. The bill would require the Secretary of the Natural Resources Agency, no later than March 1, 2014, as part of the 2014–15 budget process, to submit a report to the Joint Legislative Budget Committee and relevant legislative policy committees, including a review of the aforementioned report.

(4) Existing law imposes a state sales and use tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, and a use tax on the storage, use, or other consumption in this

state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, at a prescribed rate. Existing law imposes various other taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, a violation of which is a crime, provides procedures for the collection of fees.

This bill would, on and after January 1, 2013, in addition to any other sales and use taxes imposed by law, impose an assessment on a person who purchases a lumber product, as defined, or an engineered wood product, as defined, in this state, at the rate of 1% of the sales price. This bill would require the tax to be administered by the State Board of Equalization, as prescribed, and would require a retailer to collect the assessment from the person and remit the amounts collected pursuant to the procedures set forth in the Fee Collection Procedures Law. By expanding the application of the Fee Collection Procedures Law, a violation of which is a crime, this bill would impose a state-mandated local program.

(5) Existing law requires the Department of Forestry and Fire Protection to invite, consider, and respond in writing to comments received from public agencies, including the Department of Fish and Game, to which a timber harvest plan has been transmitted, and to consult with these agencies at their request.

This bill would appropriate the sum of \$1,500,000 from the Timber Regulation and Forest Restoration Fund to the Department of Fish and Game to be used for the purposes of supporting the department's review of timber harvest plans.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(7) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 13009.2 is added to the Health and Safety Code, to read:

13009.2. (a) In a civil action by a public agency seeking damages caused by a fire, pecuniary damages must be quantifiable and not unreasonable in relation to the prefire fair market value of the property, taking into consideration the ecological and environmental value of the property to the public. The only recoverable pecuniary damages shall be:

(1) Either the restoration and rehabilitation costs associated with bringing the damaged property back to its preinjured state or replacement or acquisition costs of equivalent value, or diminution in value of property as a result of the fire, including lost timber value, or some combination thereof.



(2) Short-term costs related to immediate damages suffered as a result of the fire, such as burned area emergency response costs, costs associated with discrete restoration activities related to repair and replacement of real property improvements, and remediation and eradication costs relative to invasive species and any other nonnative infestation caused by or exacerbated by sudden burn area conditions.

(b) In addition to the damages authorized by subdivision (a), a public agency may also recover ecological and environmental damages caused by the fire, if those damages are quantifiable, and are not redressed by the damages set forth in subdivision (a), taking into consideration the ecological and environmental value of the property to the public. Ecological and environmental damages may include:

- (1) Lost recreational value.
- (2) Lost interim use.
- (3) Lost historical and archeological value.
- (4) Damage to wildlife, wildlife habitat, water or soil quality, or plants.
- (5) Damage to any rare natural features of the property.
- (6) Lost aesthetic value.

(c) In assessing the reasonableness of damages under subdivision (b), the prefire fair market value of the property is relevant and one factor to be considered, in addition to the other factors listed in subdivision (b).

(d) A public agency plaintiff who claims environmental damages of any kind under subdivision (a) or (b) shall not seek to enhance any pecuniary or environmental damages recovered under this section. This section is not intended to alter the law regarding whether Section 3346 of the Civil Code or Section 733 of the Code of Civil Procedure can be used to enhance fire damages, but this section does confirm that if a public agency claims environmental damages under subdivision (a) or (b), it shall not seek to enhance any damages recovered under this section for any reason, and shall not use Section 3346 of the Civil Code or Section 733 of the Code of Civil Procedure to do so, regardless of whether those sections might otherwise apply. This section is not intended to limit or change the ability of a public agency to recover costs arising from a fire as provided in Sections 13009 and 13009.1.

(e) For purposes of this section, the term “public agency” means the United States of America or any political subdivision thereof, the State of California, any city, county, district, public agency, or any other public subdivision of the state.

(f) This section shall apply only to a civil action filed on or after the effective date of the act adding this section.

SEC. 2. Section 4590 of the Public Resources Code is amended to read:

4590. (a) (1) A timber harvesting plan approved on or after July 1, 2012, is effective for a period of not more than five years, unless extended pursuant to paragraph (2).

(2) A timber harvesting plan, on which timber operations have commenced but not been completed, may be extended by amendment for

a two-year period in order to complete the timber operations, if both of the following occur:

(A) Good cause is shown.

(B) All timber operations are in conformance with the plan, this chapter, and all applicable rules and regulations, upon the filing of the notice of extension as required by this section.

(b) The extension shall apply to any area covered by the plan for which a report has not been submitted under Section 4585. The notice of extension shall be provided to the department not sooner than 30 days, but at least 10 days, prior to the expiration date of the plan. The notice shall include the circumstances that prevented a timely completion of the timber operations under the plan and, consistent with Section 4583, an agreement to comply with this chapter and the rules and regulations of the board as these exist on the date the extension notice is filed.

(c) Stocking work may continue for more than the effective period of the plan under subdivision (a), but shall be completed within five years after the conclusion of other work.

(d) (1) A timber harvesting plan that is approved on or after January 1, 2010, to August 31, 2012, inclusive, may be extended by amendment for a two-year period in order to complete the timber operations, up to a maximum of two 2-year extensions, if the plan complies with subparagraphs (A) and (B) of paragraph (2) of subdivision (a) and the notice of extension, pursuant to subdivision (b), includes written certification by a registered professional forester that neither of the conditions in subdivision (e) has occurred.

(2) Notwithstanding the notice provision of subdivision (b), for the purposes of this subdivision, the notice of extension shall be provided to the department not sooner than 140 days, but at least 10 days, prior to the expiration date of the plan.

(e) The department shall not approve an extension pursuant to subdivision (a) or (d) if either of the following has occurred:

(1) Listed species, as defined in Article 1 (commencing with Section 2050) of Chapter 1.5 of Division 3 of the Fish and Game Code or the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.), have been discovered in the logging area of the plan since approval of the timber harvesting plan.

(2) Significant physical changes to the harvest area or adjacent areas have occurred since the timber harvesting plan's cumulative impacts were originally assessed.

(f) An extension of a timber harvesting plan on which either of the conditions in subdivision (e) has occurred may be obtained only pursuant to Section 1039 of Title 14 of the California Code of Regulations.

SEC. 3. Article 9.5 (commencing with Section 4629) is added to Chapter 8 of Part 2 of Division 4 of the Public Resources Code, to read:

#### Article 9.5. Timber Regulation and Forest Restoration Fund

4629. The Legislature finds and declares all of the following:

(a) A thriving in-state forest products sector provides public benefits, including employment opportunities in both rural and urban areas, and economic development for rural communities.

(b) Enabling continued economically viable production of forest products can help to protect the state's forest lands from conversion to other uses.

(c) The state's forest practice regulations provide for environmental protection of the state's air, water, habitat, and soil resources.

(d) Consumers of wood products in the state currently do not directly pay for the state's forest practice program and the costs of protecting the state's natural resources.

(e) Current in-state producers of wood products already bear a significant cost of conforming with the state's environmental laws, which economically disadvantages those producers relative to out-of-state production.

(f) Conforming with the state's environmental laws ensures that wildlife, habitat, clean air, forest, and water quality receive some protection.

4629.1. The Legislature further finds that the state's forest practice regulatory program needs to develop adequate performance measures to provide transparency for both the regulated community and other stakeholders.

4629.2. In enacting this article, it is the intent of the Legislature to accomplish all of the following:

(a) Promote and encourage sustainable forest practices consistent with provisions of this chapter in a manner consistent with other laws, including, but not limited to, the Timberland Productivity Act of 1982 (Article 1 (commencing with Section 51100) of Chapter 6.7 of Part 1 of Division 1 of Title 5 of the Government Code), the California Environmental Quality Act (Division 13 (commencing with Section 21000)), the Porter-Cologne Water Quality Act (Chapter 1 (commencing with Section 13000) of Division 7 of the Water Code), and the California Endangered Species Act (Article 3 (commencing with Section 2080) of Chapter 1.5 of Division 3 of the Fish and Game Code).

(b) Ensure continued sustainable funding for the state's forest practice program to protect the state's forest resources, and replace the current piecemeal funding structure with a single funding source.

(c) Support in-state production of timber within the state's environmental standards, and promote and encourage retention of forests and forested landscapes.

(d) Create a funding source for the restoration of the state's forested lands and promote restoration of fisheries and wildlife habitat and improvement in water quality.

(e) Promote restoration and management of forested landscapes consistent with the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code).

(f) Promote transparency in regulatory costs and programs through the creation of performance measures and accountability for the state's forest practice regulatory program and simplify the collection and use of critical data to ensure consistency with other pertinent laws and regulations.

(g) Identify and implement efficiencies in the regulation of timber harvesting between state agencies.

(h) Modify current regulatory programs to incorporate, and provide incentives for best practices, and develop standards or strategies, where appropriate, to protect natural resources, including the development of plans that address road management and riparian function on an ownershipwide, watershedwide, or districtwide scale.

4629.3. (a) The Timber Regulation and Forest Restoration Fund is hereby created in the State Treasury. All revenues received from the assessments imposed pursuant to Section 4629.5, less amounts deducted for refunds and reimbursements, shall be deposited into the fund.

(b) Unless the context requires otherwise, the following definitions shall apply to this article:

(1) “Board” means the State Board of Forestry and Fire Protection.

(2) “Department” means the Department of Forestry and Fire Protection.

(3) “Engineered wood product” means a building product, including, but not limited to, veneer-based sheeting material, plywood, laminated veneer lumber (LVL), parallel-laminated veneer (PLV), laminated beams, I-joists, edge-glued material, or composite material such as cellulosic fiberboard, hardboard, decking, particleboard, waferboard, flakeboard, oriented strand board (OSB), or any other panel or composite product where wood is a component part, that is identified in regulations adopted by the board pursuant to Section 4629.4. For purpose of this paragraph, an “engineered wood product” shall only include products that consist of at least 10 percent wood.

(4) “Fund” means the Timber Regulation and Forest Restoration Fund.

(5) “Lumber product” means a product in which wood or wood fiber is a principal component part, including, but not limited to, a solid wood product, or an engineered wood product, that is identified in regulations adopted by the board pursuant to Section 4629.4. “Lumber product” does not include furniture, paper products, indoor flooring products such as hardwood or laminated flooring, bark or cork products, firewood, or other products not typically regarded as lumber products.

(6) “Principal component part” means 10 percent of the total content by volume.

(7) “Qualified nonprofit organization” means any nonprofit public benefit corporation formed pursuant to the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code) qualified to do business in California and qualified for exempt status under Section 501(c)(3), 501(c)(4), or 501(c)(5) of the Internal Revenue Code.

(8) “Recognized tribe” means those entities recognized as eligible to receive service from the United States Bureau of Indian Affairs, as listed in the Federal Register, and those tribes designated in the list of nonrecognized tribes for California by the Native American Heritage Commission.

(9) “State responsibility area” means those areas for which the state has primary fire protection responsibility, as designated by the board in accordance with Section 4125.

4629.4. (a) On or before October 1, 2012, the board shall adopt a regulation that interprets and makes specific the lumber products and engineered wood products that the board determines shall be subject to the lumber products assessment imposed pursuant to Section 4629.5. The board shall annually update the regulation. The lumber products identified in the annually updated regulation that is adopted shall become subject to the assessment imposed pursuant to Section 4629.5 on the first day of the calendar quarter commencing more than 60 days after adoption of the updated regulation.

(b) The board shall adopt any regulations or emergency regulations necessary to implement the provisions of this article in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of title 2 of the Government Code). The board may readopt any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section. The initial adoption of emergency regulations and the one readoption of emergency regulations authorized by this subdivision shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. The initial emergency regulation and the one readoption of an emergency regulation authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulation and the one readoption of an emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted. The lumber products and engineered wood products identified in the regulation adopted shall become subject to the assessment imposed pursuant to Section 4629.5, commencing January 1, 2013.

4629.5. (a) (1) On and after January 1, 2013, there is hereby imposed an assessment on a person who purchases a lumber product or an engineered wood product for the storage, use, or other consumption in this state, at the rate of 1 percent of the sales price.

(2) A retailer shall charge the person the amount of the assessment as a charge that is separate from, and not included in, any other fee, charge, or other amount paid by the purchaser.

(3) The retailer shall collect the assessment from the person at the time of sale, and may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to regulations, for any costs associated with the collection of the assessment, to be taken on the first return or next consecutive returns until the entire reimbursement amount is retained. For purposes of this paragraph, the State Board of Equalization may adopt emergency regulations pursuant to Section 11346.1 of the Government Code. The adoption of any regulation pursuant to this

paragraph shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, and general welfare.

(b) The retailer shall separately state the amount of the assessment imposed under this section on the sales receipt given by the retailer to the person at the time of sale.

(c) The State Board of Equalization shall administer and collect the assessment imposed by this section pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code) with those changes as may be necessary to conform to the provisions of this article. For purposes of this section, the references in the Fee Collection Procedures Law to “fee” shall include the assessment imposed by this section.

(d) (1) The assessment is required to be collected by a retailer and any amount unreturned to the person who paid an amount in excess of the assessment, but was collected from the person under the representation by the retailer that it was owed as an assessment, constitutes debts owed by the retailer to this state.

(2) Every person who purchases a lumber product or an engineered wood product for storage, use, or other consumption in this state is liable for the assessment until it has been paid to this state, except that payment to a retailer relieves the person from further liability for the assessment. Any assessment collected from a person that has not been remitted to the State Board of Equalization shall be a debt owed to the state by the retailer required to collect and remit the assessment. Nothing in this part shall impose any obligation upon a retailer to take any legal action to enforce the collection of the assessment imposed by this section.

(e) Except as provided in paragraph (3) of subdivision (a), the State Board of Equalization may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this section, including, but not limited to, collections, reporting, refunds, and appeals.

(f) (1) The assessment imposed by this section is due and payable to the State Board of Equalization quarterly on or before the last day of the month next succeeding each quarterly period.

(2) On or before the last day of the month following each quarterly period, a return for the preceding quarterly period shall be filed with the State Board of Equalization using electronic media, in the form prescribed by the State Board of Equalization. Returns shall be authenticated in a form or pursuant to methods, as prescribed by the State Board of Equalization.

(g) For purposes of this section, all of the following shall apply:

(1) “Purchase” has the same meaning as that term is defined in Section 6010 of the Revenue and Taxation Code.

(2) “Retailer” has the same meaning as that term is defined in Section 6015 of the Revenue and Taxation Code.

(3) “Sales price” has the same meaning as that term is defined in Section 6011 of the Revenue and Taxation Code.

(4) “Storage” has the same meaning as that term is defined in Section 6008 of the Revenue and Taxation Code.

(5) “Use” has the same meaning as that term is defined in Section 6009 of the Revenue and Taxation Code.

(h) (1) Every person required to pay the assessment imposed under this article shall register with the State Board of Equalization. Every application for registration shall be made in a form prescribed by the State Board of Equalization and shall set forth the name under which the applicant transacts or intends to transact business, the location of his or her place or places of business, and such other information as the State Board of Equalization may require. An application for registration shall be authenticated in a form or pursuant to methods as may be prescribed by the State Board of Equalization.

(2) An application for registration filed pursuant to this section may be filed using electronic media as prescribed by the State Board of Equalization.

(3) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

4629.6. Moneys deposited in the fund shall, upon appropriation by the Legislature, only be expended for the following purposes:

(a) To reimburse the State Board of Equalization for its administrative costs associated with the administration, collection, audit, and issuance of refunds related to the lumber products and engineered wood assessment established pursuant to Section 4629.5.

(b) To pay refunds issued pursuant to Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code.

(c) To support the activities and costs of the department, the Department of Conservation, the Department of Fish and Game, the State Water Resources Control Board, and regional water quality control boards associated with the review of projects or permits necessary to conduct timber operations. On or after July 1, 2013, except for fees applicable for fire prevention or protection within state responsibility area classified lands or timber yield assessments, no currently authorized or required fees shall be charged by the agencies listed in this subdivision for activities or costs associated with the review of a project, inspection and oversight of projects, and permits necessary to conduct timber operations of those departments and boards.

(d) For transfer to the department’s Forest Improvement Program, upon appropriation by the Legislature, for forest resources improvement grants and projects administered by the department pursuant to Chapter 1 (commencing with Section 4790) and Chapter 2 (commencing with Section 4799.06) of Part 2 of Division 4.

(e) To fund existing restoration grant programs.

(f) To the department, upon appropriation by the Legislature, for fuel treatment grants and projects pursuant to authorities under the Wildland Fire Protection and Resources Management Act of 1978 (Article 1 (commencing with Section 4461) of Chapter 7 of Part 2 of Division 4).

(g) To the department, upon appropriation by the Legislature, to provide grants to local agencies responsible for fire protection, qualified nonprofits,

recognized tribes, local and state governments, and resources conservation districts, undertaken on a state responsibility area (SRA) or on wildlands not in an SRA that pose a threat to the SRA, to reduce the costs of wildland fire suppression, reduce greenhouse gas emissions, promote adaptation of forested landscapes to changing climate, improve forest health, and protect homes and communities.

4629.7. All grants made pursuant to subdivisions (f) and (g) of Section 4629.6 shall fund activities that do any of the following, in order of priority:

(a) Improve forest health.

(b) Promote climate mitigation strategies included in the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code) scoping plan for the forest sector, as adopted by the State Air Resources Control Board, or as amended through subsequent actions of that board.

(c) Promote climate change adaptation strategies for the forest sector, as adopted by the Natural Resources Agency in the California Climate Adaptation Strategy.

4629.8. (a) Funds deposited in the Timber Regulation and Forest Restoration Fund shall be appropriated in accordance with the following priorities:

(1) First priority shall be for funding associated with the administration and delivery of responsibilities identified in subdivisions (a) to (c), inclusive, of Section 4629.6.

(2) Only after paragraph (1) is funded, the second priority shall be, if deposits are sufficient in future years to maintain the fund, by 2016, at a minimum reserve of four million dollars (\$4,000,000), for use and appropriation by the Legislature in years during which revenues to the account are projected to fall short of the ongoing budget allocations for support of the activities identified in paragraph (1).

(3) Only after paragraphs (1) and (2) are funded, the third priority shall be in support of activities designated in subdivisions (d) and (e) of Section 4629.6.

(4) Only after paragraphs (1), (2), and (3) are funded, the fourth priority shall be to support the activities designated in subdivisions (f) and (g) of Section 4629.6.

(b) No funds shall be used to pay for or reimburse any requirements, including mitigation of a project proponent or applicant, as a condition of any permit.

4629.9. (a) On or before January 10, 2013, and on each January 10 thereafter in conjunction with the 2014–15 Governor’s Budget and Governors’ Budgets thereafter, the Secretary of the Natural Resources Agency, in consultation with the Secretary for Environmental Protection, shall submit to the Joint Legislative Budget Committee a report on the activities of all state departments, agencies, and boards relating to forest and timberland regulation. This report shall include, at a minimum, all of the following:



(1) A listing, by organization, of the proposed total costs associated with the review, approval, and inspection of timber harvest plans and associated permits.

(2) The number of timber harvest plans, and acreage covered by the plans, reviewed in the 2011–12 fiscal year, or the most recent fiscal year.

(3) To the extent feasible, a listing of activities, personnel, and funding, by department, for the forest practice program for 2012–13, or the most recent fiscal year, and the preceding 10 fiscal years.

(4) The number of staff in each organization dedicated fully or partially to (A) review of timber harvest plans, and (B) other forestry-related activities, by geographical location in the state.

(5) The costs of other forestry-related activities undertaken.

(6) A summary of any process improvements identified by the administration as part of ongoing review of the timber harvest process, including data and technology improvement needs.

(7) Workload analysis for the forest practice program in each organization.

(8) In order to assess efficiencies in the program and the effectiveness of spending, a set of measures for, and a plan for collection of data on, the program, including, but not limited to:

(A) The number of timber harvest plans reviewed.

(B) Average time for plan review.

(C) Number of field inspections per inspector.

(D) Number of acres under active plans.

(E) Number of violations.

(F) Evaluating ecological performance.

(b) A report required to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

4629.10. (a) No later than March 1, 2014, as part of the 2014–15 budget process, the Secretary of the Natural Resources Agency, in conjunction with the Secretary for Environmental Protection, shall submit a report to the Joint Legislative Budget Committee and to the relevant legislative policy committees, including a review of the report required to be submitted to the Joint Legislative Budget Committee pursuant to Section 4629.9. This review shall include recommendations to the budget committees on the future funding of the program, the adequacy of the current regulatory programs, and suggestions for policy recommendations that will improve this chapter and its implementing regulations, and other aspects of the laws governing timber harvesting in the state.

(b) (1) A report required to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

(2) Pursuant to Section 10231.5 of the Government Code, this section is repealed as of January 1, 2018.

4629.11. (a) Notwithstanding any other law, the revenues in any fiscal year may be accounted for on an accrued basis. The department may borrow against anticipated revenues to the fund to meet cashflow needs.

(b) Notwithstanding any other law, a loan obtained pursuant to subdivision (a) shall be interest free. The department shall repay the loan in a timely manner from reserves received into the fund.

4629.12. (a) The Director of Finance shall authorize a loan, from the General Fund to the fund, to implement the activities described in Section 4629.6.

(b) Any loan made pursuant to this section shall be repaid, with interest at the pooled money investment rate, from revenues from the assessment imposed pursuant to Section 4629.5.

4629.13. Notwithstanding any other law, the Controller may use the moneys in the fund for cashflow loans to the General Fund, as provided in Sections 16310 and 16381 of the Government Code. Any such loan shall be exempt from paragraph (2) of subdivision (b) of Section 16310 of the Government Code. Interest shall be paid on all moneys loaned to the General Fund and shall be computed at a rate determined by the Pooled Money Investment Board to be the current earning rate of the fund from which the money is loaned. This section does not authorize any transfer that would interfere with the carrying out of the object for which these funds were created.

SEC. 4. The sum of one million five hundred thousand dollars (\$1,500,000) is hereby appropriated from the Timber Regulation and Forest Restoration Fund, created pursuant to subdivision (a) of Section 4629.3 of the Public Resources Code, to the Department of Fish and Game to be used for the purposes of supporting the department's review of timber harvest plans.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that statutory changes are adopted that are necessary to address forest resource management needs in the state in the coming years at the earliest possible time, it is necessary that this act take effect immediately.

**ECONOMIC AND FISCAL IMPACT STATEMENT****(REGULATIONS AND ORDERS)**

STN. 399 (REV. 12/2008)

**See SAM Section 6601 - 6616 for Instructions and Code Citations**

DEPARTMENT NAME State Board of Equalization	CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Retailer Reimbursement Retention		NOTICE FILE NUMBER Z

**ECONOMIC IMPACT STATEMENT****A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)**

1. Check the appropriate box(es) below to indicate whether this regulation:

- |   |  |
|---|--|
| <input type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements   |
| <input type="checkbox"/> b. Impacts small businesses            | <input type="checkbox"/> f. Imposes prescriptive instead of performance  |
| <input type="checkbox"/> c. Impacts jobs or occupations         | <input type="checkbox"/> g. Impacts individuals  |
| <input type="checkbox"/> d. Impacts California competitiveness  | <input checked="" type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) No significant adverse economic impact on business or employees, small business, jobs or occupations.

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: \_\_\_\_\_ Describe the types of businesses (Include nonprofits.): \_\_\_\_\_

Enter the number or percentage of total businesses impacted that are small businesses: \_\_\_\_\_

Enter the number of businesses that will be created: \_\_\_\_\_ eliminated: \_\_\_\_\_

Explain: \_\_\_\_\_

4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional (List areas.): \_\_\_\_\_

5. Enter the number of jobs created: \_\_\_\_\_ or eliminated: \_\_\_\_\_ Describe the types of jobs or occupations impacted: \_\_\_\_\_

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☐ No If yes, explain briefly: \_\_\_\_\_**B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)**

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ \_\_\_\_\_

a. Initial costs for a small business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

b. Initial costs for a typical business: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

c. Initial costs for an individual: \$ \_\_\_\_\_ Annual ongoing costs: \$ \_\_\_\_\_ Years: \_\_\_\_\_

Describe other economic costs that may occur: \_\_\_\_\_

**ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)**

2. If multiple industries are impacted, enter the share of total costs for each industry: \_\_\_\_\_  
\_\_\_\_\_

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ \_\_\_\_\_

4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: \_\_\_\_\_ and the number of units: \_\_\_\_\_

5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: \_\_\_\_\_  
Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ \_\_\_\_\_

---

**C. ESTIMATED BENEFITS** (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

---

1. Briefly summarize the benefits that may result from this regulation and who will benefit: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Are the benefits the result of : ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?  
Explain: \_\_\_\_\_

3. What are the total statewide benefits from this regulation over its lifetime? \$ \_\_\_\_\_

---

**D. ALTERNATIVES TO THE REGULATION** (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

---

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: \$ _____	Cost: \$ _____
Alternative 1:	Benefit: \$ _____	Cost: \$ _____
Alternative 2:	Benefit: \$ _____	Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☐ No  
Explain: \_\_\_\_\_

---

**E. MAJOR REGULATIONS** (Include calculations and assumptions in the rulemaking record.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.

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## ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? ☐ Yes ☐ No (If No, skip the rest of this section.)

2. Briefly describe each equally as an effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: \_\_\_\_\_

Alternative 2: \_\_\_\_\_

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

Alternative 1: \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

Alternative 2: \$ \_\_\_\_\_ Cost-effectiveness ratio: \$ \_\_\_\_\_

### FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in \_\_\_\_\_, Budget Act of \_\_\_\_\_ or Chapter \_\_\_\_\_, Statutes of \_\_\_\_\_

☐ b. will be requested in the \_\_\_\_\_ Governor's Budget for appropriation in Budget Act of \_\_\_\_\_  
(FISCAL YEAR)

☐ 2. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in \_\_\_\_\_

☐ b. implements the court mandate set forth by the \_\_\_\_\_  
court in the case of \_\_\_\_\_ vs. \_\_\_\_\_

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. \_\_\_\_\_ at the \_\_\_\_\_  
election; (DATE)

☐ d. is issued only in response to a specific request from the \_\_\_\_\_  
\_\_\_\_\_, which is/are the only local entity(s) affected;

☐ e. will be fully financed from the \_\_\_\_\_ authorized by Section \_\_\_\_\_  
(FEES, REVENUE, ETC.)

\_\_\_\_\_ of the \_\_\_\_\_ Code;

☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit;

☐ g. creates, eliminates, or changes the penalty for a new crime or infraction contained in \_\_\_\_\_

☐ 3. Savings of approximately \$ \_\_\_\_\_ annually.

☐ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law regulations.

**ECONOMIC AND FISCAL IMPACT STATEMENT *cont.* (STD. 399, Rev. 2-98)**


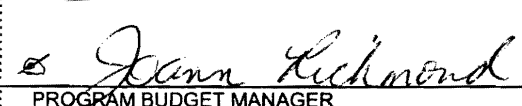
- ☒ 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- ☐ 6. Other.

**B. FISCAL EFFECT ON STATE GOVERNMENT** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year. It is anticipated that State agencies will:
- ☐ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request an increase in the currently authorized budget level for the \_\_\_\_\_ fiscal year.
- ☐ 2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- ☐ 4. Other.

**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☐ 2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- ☐ 4. Other.

SIGNATURE 		TITLE Regulations Coordinator
AGENCY SECRETARY <sup>1</sup>		DATE 11-27-12
APPROVAL/CONCURRENCE		DATE
DEPARTMENT OF FINANCE <sup>2</sup>	PROGRAM BUDGET MANAGER	
APPROVAL/CONCURRENCE	Exempt under SAM section 6660	

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
2. Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-80  
916-445-2130 • FAX 916-324-3984  
www.boe.ca.gov

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Third District, Rolling Hills Estates

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Fourth District, Los Angeles

JOHN CHIANG  
State Controller

CYNTHIA BRIDGES  
Executive Director

**November 14, 2012**

**To Interested Parties:**

**Notice of Emergency Action**

**The State Board of Equalization Has Adopted  
California Code of Regulations, Title 18,  
Section 2000, *Retailer Reimbursement Retention***

**NOTICE IS HEREBY GIVEN**

Public Resources Code (PRC) section 4629.5, subdivision (a)(1) imposes a one-percent assessment on purchasers of lumber products and engineered wood products on and after January 1, 2013. PRC section 4629.5, subdivision (a)(3) requires retailers to collect the assessment and provides that retailers “may retain an amount [from the assessments they collect] equal to the amount of reimbursement, as determined by the State Board of Equalization [(Board)] pursuant to regulations, for any costs associated with the collection of the assessment” imposed by subdivision (a)(1). The Board, pursuant to the authority vested in it by PRC section 4629.5, subdivision (a)(3) has adopted California Code of Regulations, title 18, section (Regulation) 2000, *Retailer Reimbursement Retention*, as an emergency regulation pursuant to Government Code section 11346.1, to specify the amount of reimbursement a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3).

**EMERGENCY**

*Statement of Emergency*

PRC section 4629.5, subdivision (a)(3) expressly provides that “For purposes of this paragraph, the State Board of Equalization may adopt emergency regulations pursuant to Section 11346.1 of the Government Code. The adoption of any regulation pursuant to this paragraph shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, and general welfare.”

*Section 48 Statement*

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of the emergency regulation to the Office of Administrative Law (OAL), the

Board provide a notice of the emergency regulation to every person who has filed a request for notice of regulatory action with the Board. After submission of the emergency regulation to OAL, OAL shall allow interested persons five calendar days to submit comments on the emergency regulation as set forth in Government Code section 11349.6.

## **AUTHORITY & REFERENCE**

PRC section 4629.5

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### *Existing Law*

PRC section 4629.5, as enacted by Assembly Bill No. (AB) 1492 (Stats. 2012, ch. 289), imposes, on and after January 1, 2013, a one-percent assessment on purchasers of lumber products and engineered wood products to be collected by retailers at the time of sale. As enacted by AB 1492, PRC section 4629.5, subdivision (a)(3) authorizes the Board to adopt regulations to determine the amount retailers may retain from the assessments they collect as reimbursement for certain compliance costs. Specifically, PRC section 4629.5, subdivision (a)(3), in relevant part, provides:

The retailer shall collect the assessment from the person [i.e., purchaser] at the time of sale, and may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to regulations, for any costs associated with the collection of the assessment, to be taken on the first return or next consecutive returns until the entire reimbursement amount is retained.

Notably, the statute provides that retailers may only retain the Board-prescribed amount of reimbursement one time, on the retailers' first return or next consecutive returns filed immediately after the retailers are required to begin collecting the assessment on January 1, 2013. The statute does not authorize retailers to retain additional amounts thereafter.

As to legislative history, both the relevant Senate and Assembly floor analyses refer to retailers being reimbursed for "costs to set up collection systems." (See p. 2 of the September 1, 2012, Assembly Floor Analysis of AB 1492 and p.2 of the August 29, 2012, Senate Floor Analysis of AB 1492.) Thus, both the plain language of PRC section 4629.5, subdivision (a)(3) and the available information regarding legislative intent support an interpretation that subdivision (a)(3) provides for affected retailers to retain a one-time amount, as specifically determined by the Board, for reimbursement of costs to set up collection systems prior to the commencement of their collection duties on January 1, 2013. Therefore, neither the plain language of PRC section 4629.5, subdivision (a)(3) nor the available legislative history persuasively support an interpretation that would allow for the retention of ongoing costs of compliance or of amounts in excess of the Board-specified reimbursement amount.



*Regulation 2000*

The Board added a new chapter 4.1 to division 2 of title 18 of the California Code of Regulations so that any regulations the Board is required to adopt to implement, interpret, and make specific the assessment imposed by PRC section 4629.5, as enacted by AB 1492, can be codified in the new chapter. The Board also voted to adopt Regulation 2000, *Retailer Reimbursement Retention*, which will be codified in new chapter 4.1, as an emergency regulation, on October 23, 2012, in order to determine the “amount of reimbursement” a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3), when retailers start collecting the assessment on January 1, 2013. Regulation 2000 provides that retailers as of January 1, 2013, may retain collected assessment amounts of up to \$250 per location as reimbursement for one-time, startup costs associated with the collection of the assessment (i.e., the costs to set up collection systems). Specifically, Regulation 2000 provides:

Public Resources Code section 4629.5, as added by Statutes 2012, chapter 289, requires the Board of Equalization to adopt a regulation to determine the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by Public Resources Code section 4629.5.

A retailer required to collect the Lumber Products Assessment may retain no more than \$250 per location as reimbursement for startup costs associated with the collection of the assessment. Such reimbursement is to be taken on the retailer’s first return on which the Lumber Products Assessment is reported or, if the amount of the collected assessment is less than the allowed reimbursement, on the retailer’s next consecutive returns until the allowed reimbursement amount is retained.

“Location” means and is limited to a business location registered under the retailer’s seller’s permit as of January 1, 2013, where sales of products subject to the assessment are made.

Regulation 2000 is anticipated to provide the following benefits:

- Provide certainty as to the amount of reimbursement retailers may retain pursuant to PRC section 4629.5, subdivision (a)(3) before the assessment is imposed and collected beginning on January 1, 2013, and before retailers are required to file their first returns showing the retention of the Board-specified amount of reimbursement;
- Permit retailers to retain the amount of reimbursement determined by the Board without requiring retailers to keep additional records or substantiate their individual costs; and
- Preserve the public peace, health, safety, and general welfare, as provided in PRC section 4629.5, subdivision (a)(3).

The \$250 reimbursement amount is supported by U.S. Census Bureau data and a 2006 PricewaterhouseCoopers LLP report (*Retail Sales Tax Compliance Costs: A National Estimate, Volume One: Main Report*, PricewaterhouseCoopers LLP, Prepared for Joint Cost of Collection Study, National Economic Consulting, April 7, 2006). The report was commissioned by a public-private partnership known as the Joint Cost of Collection Study and analyzes a large-scale survey that was conducted to develop the first national measure of sales tax compliance costs. The report shows that, in 2003 (a time during which many retailers had compliance costs associated with rate and base changes under the Streamlined Sales and Use Tax Agreement), gross retail sales tax compliance costs for programming and servicing cash registers were reflected by a weighted average cost of 0.01 percent of taxable sales. (See 2006 PricewaterhouseCoopers LLP report, Table V.B.1b (“Gross Compliance Costs by Type and Size of Annual Retail Sales, 2003 [As a percentage of total taxable sales]”), at p. 13.)

Board staff calculated the \$250 amount by multiplying 0.01 percent by \$2,500,000. The \$2,500,000 figure was chosen after reviewing the United States Census Bureau’s data for the Retail Trade Sector from the *2007 Economic Census*, which showed that about 50 percent of lumber retail establishments in 2007 had sales of \$2,500,000 or less. This data provides an objective foundation for determining that a reimbursement of \$250 per location represents a reasonable estimate of the average startup costs for retail lumber establishments that must start collecting the assessment on January 1, 2013 (i.e., the costs to set up collection systems).

As additional comparison, Board staff looked at the average reimbursement amount retained by retailers under the Covered Electronic Waste Recycling Fee imposed by PRC section 42464 and the California Tire Fee imposed by PRC section 42885, which allow retailers to retain 3 percent and 1.5 percent of the fees they collect, respectively, as reimbursement for collection costs. The average reimbursement amount, meaning the total reimbursement amount retained by all retailers divided by the number of retailers, was \$244 per retailer in fiscal year 2010-2011. While compliance costs for these programs are reimbursed per retailer (not per location) and on an ongoing basis (not a one-time, startup basis), the average reimbursement amount for these programs is generally consistent with, and provides additional support for, the \$250 reimbursement amount for collecting the assessment imposed by PRC section 4629.5.

David Bischel, President of the California Forestry Association (CFA), indicated in his October 19, 2012, letter to the Board that:

- The CFA was a key sponsor of and worked closely with the Legislature and the administration in enacting AB 1492; and
- The CFA supports the adoption of Regulation 2000 because the regulation “reflects the legislative intent regarding retailer compensation,” which “was to allow only a one-time amount to cover initial costs of compliance, which the Legislature had been informed would be no more than \$250 per retail establishment.”

Mr. Bischel also made similar comments on behalf of the CFA and urged the Board to adopt Regulation 2000 during the Board’s discussion of the regulation on October 23, 2012.

The Board has performed an evaluation of whether Regulation 2000 is inconsistent or incompatible with existing state regulations and determined that Regulation 2000 is not inconsistent or incompatible with existing state regulations because it is the only existing state regulation prescribing the “amount of reimbursement” a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3). In addition, there is no federal assessment similar to the assessment imposed by PRC section 4629.5 and there are no comparable federal regulations or statutes to Regulation 2000.

## **DOCUMENTS RELIED UPON AND INTERESTED PARTIES COMMENTS**

The Board relied upon a memorandum from its Chief Counsel, Randy Ferris, dated October 12, 2012, the attachment to the memorandum, Mr. Bischel’s October 19, 2012, letter, and the comments made by Board staff and interested parties during the discussion of Regulation 2000 on October 23, 2012, including Mr. Bischel’s comments expressing the CFA’s support for the adoption of Regulation 2000, in voting to adopt Regulation 2000 as an emergency regulation.

In addition, the Board received a September 24, 2012, letter from Bill Dombrowski, President and CEO of the California Retailers Association (CRA), which asked eight questions regarding the collection of the assessment imposed by PRC section 4629.5, that Board staff responded to during the Board’s discussion of Regulation 2000 on October 23, 2012.

Further, prior to adopting Regulation 2000, the Board received and considered an October 12, 2012, letter from Ken Dunham, Executive Director of the West Coast Lumber & Building Material Association, in which the association requested that:

- For retailers whose computer systems are capable of implementing the assessment, Regulation 2000 provide an initial “reimbursement of a minimum of \$4,500 per business location” and ongoing reimbursement of “\$1,500 annually to handle updates and changes” to the retailers’ computer systems; and
- For those retailers whose current computer systems are not capable of implementing the assessment, Regulation 2000 provide reimbursement at “a level sufficient to recover the cost of replacement computer systems.”

The Board received and considered an October 18, 2012, letter from David Carlsen, Vice President Tax for 84 Lumber Company, which explained that the company had conservatively estimated that it would cost \$21,000 to make changes to its POS system to collect the assessment at its California locations. The Board also received and considered an October 21, 2012, letter from Mr. Dombrowski, which indicated that the CRA believes that the \$250 per location reimbursement amount specified by Regulation 2000 is inadequate and that the CRA disagrees with the conclusion that PRC section 4629.5, subdivision (a)(3) only provides for a retailer to retain the specified reimbursement amount “one time.”

Furthermore, during the Board’s discussion of Regulation 2000 on October 23, 2012:

- Mr. Dunham reiterated the West Coast Lumber & Building Material Association's comments from his October 12, 2012, letter;
- Gerry Charron, Software Development Manager for Stock Building Supply, stated that Regulation 2000 would provide \$2,500 of reimbursement to his business, but that he estimates that it will cost his business \$50,000 (250 hours at \$200 per hour) to update its computer system to collect the assessment;
- Craig Evans, Vice President of Learned Lumber, stated that it will cost his business \$7,800, plus overtime, to update its computer system to collect the assessment and urged the Board to reconsider the amount of reimbursement specified by Regulation 2000; and
- Mandy Lee, Director of Government Affairs for the CRA, reiterated the CRA's comments from Mr. Dombrowski's October 21, 2012, letter, and requested that the CRA be given a further opportunity to substantiate its members' costs.

Therefore, on October 23, 2012, the Board also unanimously voted to begin a Business Taxes Committee process to meet with the interested parties and discuss the adoption of a regulation to permanently specify the amount of reimbursement a retailer may retain for costs associated with the collection of the assessment imposed by PRC section 4629.5 beginning January 1, 2013.

#### **NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Board has determined that the adoption of Regulation 2000 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

#### **NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS**

The Board has determined that the adoption of Regulation 2000 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

#### **EFFECTIVE DATE**

The assessment imposed by PRC section 4629.5 will be operative on and after January 1, 2013, and retailers will not be able to retain the reimbursement provided by PRC section 4629.5, subdivision (a)(3) and specified by Regulation 2000 until they begin collecting the assessment on January 1, 2013. Therefore, the Board hereby specifies that Regulation 2000 shall be effective on and after January 1, 2013, pursuant to Government Code section 11346.1, subdivision (d).


November 14, 2012

## CONTACT PERSONS

Questions regarding the substance of Regulation 2000 should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov), or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Other inquiries concerning the emergency regulation should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984 , by e-mail at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov), or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

Sincerely,

  
Joann Richmond, Chief  
Board Proceedings Division

JR:reb

## Title 18. Public Revenues

### Division 2. State Board of Equalization – Business Taxes

#### Chapter 4.1. Lumber Products Assessment

##### **Regulation 2000. Retailer Reimbursement Retention**

Public Resources Code section 4629.5, as added by Statutes 2012, chapter 289, requires the Board of Equalization to adopt a regulation to determine the amount of reimbursement a retailer may retain for costs associated with the collection of the Lumber Products Assessment imposed by Public Resources Code section 4629.5.

A retailer required to collect the Lumber Products Assessment may retain no more than \$250 per location as reimbursement for startup costs associated with the collection of the assessment. Such reimbursement is to be taken on the retailer's first return on which the Lumber Products Assessment is reported or, if the amount of the collected assessment is less than the allowed reimbursement, on the retailer's next consecutive returns until the allowed reimbursement amount is retained.

"Location" means and is limited to a business location registered under the retailer's seller's permit as of January 1, 2013, where sales of products subject to the assessment are made.

Note: Authority cited: Section 4629.5, Public Resources Code. Reference: Section 4629.5, Public Resources Code.

## Regulation History

**Type of Regulation:** Special Tax

Regulation: 2000

Title: 2000, *Retailer Reimbursement Retention* (Emergency Regulation)

**Preparation:** Steve Smith

**Legal Contact:** Steve Smith

Board proposes to promulgate an emergency regulation to implement the provisions of AB 1492 (Chapter 289, Stats of 2012).

### History of Proposed Regulation:

November 14, 2012	Notice mailed
October 23, 2012	Board Approves Regulation (Vote 3-1)
October 23, 2012	Chief Counsel Matters

Sponsor:	NA
Support:	NA
Oppose:	NA

**Bennion, Richard**

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**From:** State Board of Equalization - Announcement of Regulatory Change  
[Legal.Regulations@BOE.CA.GOV]  
**Sent:** Wednesday, November 14, 2012 2:53 PM  
**To:** BOE\_REGULATIONS@LISTSERV.STATE.CA.GOV  
**Subject:** State Board of Equalization - Announcement of Adoption of Emergency Regulation 2000

The State Board of Equalization would like to announce that it adopted Regulation 2000, *Retailer Reimbursement Retention*, on October 23, 2012, as an emergency regulation. Public Resources Code (PRC) section 4629.5, as added by Assembly Bill No. 1492 (Stats. 2012, ch. 289), imposes, on and after January 1, 2013, a one-percent assessment on purchasers of lumber products and engineered wood products to be collected by retailers at the time of sale. Regulation 2000 implements PRC section 4629.5 by prescribing the "amount of reimbursement" a retailer may retain pursuant to PRC section 4629.5, subdivision (a)(3), when retailers start collecting the assessment on January 1, 2013.

To view the notice, text, and history click on the following  
link: [http://www.boe.ca.gov/regs/Emergency\\_Reg\\_2000\\_2012.htm](http://www.boe.ca.gov/regs/Emergency_Reg_2000_2012.htm)

Questions regarding the substance of the new emergency regulation should be directed to Ms. Lynn Whitaker by phone at (916) 324-8483, by email at [Lynn.Whitaker@boe.ca.gov](mailto:Lynn.Whitaker@boe.ca.gov), or by mail at State Board of Equalization, Attn: Lynn Whitaker, 450 N Street, MIC:50, P.O. Box 942879, Sacramento, CA 94279-0050.

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## Statement of Compliance

The State Board of Equalization, in process of adopting Special Tax Regulation 2000, *Retailer Reimburement Retention*, did comply with the provision of Government Code section 50(a)(5)(A) confirming statement . A notice to interested parties was mailed on November 14, 2012, 8 workings days prior to being submitted OAL on November 28, 2012.

December 3, 2012

A handwritten signature in black ink, appearing to read "Richard Bennion", written over a horizontal line.

Richard Bennion  
Regulations Coordinator  
State Board of Equalization